TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 95.

WILLIAM C. MURRAY, PLAINTIFF IN ERROR,

vs.

THE CITY COUNCIL OF CHARLESTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED AUGUST 18, 1875.

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2 UNITED STATES OF AMERICA.

[SEAL.] The President of the United States of America to the honorable the chief-justice and associate-justices of the supreme court of the State of South Carolina, the same being the highest judicial tribunal in the said State, and the court of the last resort for the correction of errors in all courts, both at law and in equity, in all the inferior courts in said State, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea and suit which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William C. Murray and the city council of Charleston, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, a manifest error has happened, to the great
3 damage of the said William C. Murray, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the twelfth day of July, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth year.

J. E. HAGOOD,
C. C. C. Dist. of So. Ca.

Allowed by—

F. J. MOSES,
Chief-Justice Supreme Court of So. Car.

JULY 12, 1875.

4, 5 (Indorsed:) United States of America. William C. Murray, plaintiff in error, vs. The City Council of Charleston, defendants in error. Writ of error from the Supreme Court of the United States to the supreme court of the State of South Carolina.

Filed 26 July, 1875.

J. E. HAGOOD,
C. C. C. U. S. Dist. S. C.

Filed 28 July, 1875.

ALBERT M. BOOZER,
Clerk of Supreme Court S. C.

6 UNITED STATES OF AMERICA.

To the city council of Charleston:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of South Carolina, wherein William C. Murray is plaintiff in error and you are the defendant in error, to show cause, if any you have, why the judgment or decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Franklin J. Moses, chief-justice of the supreme court of the State of South Carolina, this twelfth day of July, in the year of our Lord one thousand eight hundred and seventy-five, and the one hundredth year of the Independence of the United States.

F. J. MOSES,
Ch'f-Justice Supreme C't of So. Ca.

JULY 12, '75.

7 (Indorsed:) United States of America. William C. Murray vs. The City Council of Charleston. Citation.

I acknowledge for the city council of Charleston due service of within citation.

E. B. SEABROOK,
Corp. Counsel.

JULY 19TH, 1875.

Filed 28 July, 1875.

ALBERT M. BOOZER,
Clerk of Supreme Court S. C.

8 Know all men by these presents, that we, John C. Cochran, J. P. Moodie, and John D. Alexander, are held and firmly bound unto the city council of Charleston in the full and just sum of three hundred dollars, to be paid to the said city council of Charleston, its successors and assigns; to which payment, well and truly to be made and done, we bind ourselves, and each and every of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this third day of July, in the year of our Lord 1875.

Whereas, lately, at the supreme court of the State of South Carolina, in a suit depending in said court between William C. Murray and the City Council of Charleston, a decision was re'dered against the said William C. Murray; and the said William C. Murray having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the decision in the aforesaid suit, and a citation directed to the City Council of Charleston, citing and admonishing the

9 said City Council of Charleston to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is, that if the said plaintiffs in error shall prosecute the said writ of error to effect, and

answer all damages and costs if they fail to make this plea good, then the above obligation to be void; else to be in full force and virtue.

(Signed) JNO. C. COCHRAN. [SEAL.]
J. P. MOODIE. [SEAL.]
JNO. D. ALEXANDER. [SEAL.]

Signed and sealed in the presence of—
(Signed) JNO. M. HARLESTON.

Approved.
(Signed) F. J. MOSES,
Chief-Justice Supreme Ct So. Car.

10, 11 (Indorsed:) William C. Murray vs. The City Council of Charleston. Jno. C. Cochran et al. to City Council of Charleston. Copy bond.

Filed 28 July, 1875.

ALBERT M. BOOZER,
Clerk of Supreme Court S. C.

12, 13 *The answer of the justices of the supreme court of the State of South Carolina to the foregoing writ.*

The record and proceedings whereof mention is therein made follow in these words, to wit:

14, 15 In the supreme court of the State of South Carolina.

WILLIAM C. MURRAY, APPELLANT,
vs.
THE CITY COUNCIL OF CHARLESTON, RESPONDENT.

On the 17th day of November, 1871, William C. Murray filed his summons and complaint in the court of common pleas as follows:

Summons for money demand.

THE STATE OF SOUTH CAROLINA,
County of Charleston.

Court of common pleas.

WILLIAM C. MURRAY, PLAINTIFF,
against
THE CITY COUNCIL OF CHARLESTON, DEFENDANTS. } Complaint served.

To the City Council of Charleston, defendants in this action:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer on the subscribers at their office, No. 39
16, 17 Broad street, within twenty days after the service of this summons on you, exclusive of the day of service.

If you fail to answer this complaint within the time aforesaid the plaintiff will take judgment against you for the sum of four hundred and forty $\frac{75}{100}$ dollars, ($440.75,) with interest on the sum of eighty-eight $\frac{15}{100}$ dollars, ($88.15,) from first day of April, 1870; and on a like sum from first day of July, 1870; and on a like sum from first day of October, 1870; and on a like sum from first day of January, 1871; and on a like sum from first day of April, 1871, and costs.

Dated 3d June, 1871.

PORTER & CONNER,
Plaintiff's Attorneys.

THE STATE OF SOUTH CAROLINA,
County of Charleston.

Court of common pleas.

WILLIAM C. MURRAY, PLAINTIFF,
against
THE CITY COUNCIL OF CHARLESTON, DEFENDANTS. } Complaint.

The complaint of the above-named plaintiff respectfully shows to this court:

1. That the defendants are a public corporation by law.

2. That W'm C. Murray has been since January, 1870, and is now, the holder and owner of six per cent. stock of the city of Charleston, with interest payable quarterly, to the amount of thirty-five thousand two hundred and sixty-two $\frac{33}{100}$ dollars, ($35,262.33,) as per certificates in statement hereto annexed.

3. That the plaintiff is not a resident of the city of Charleston, 18, 19 or State of South Carolina, and has not been since first of January, 1870; but is a resident of Bonn, Germany, and has been since the date aforesaid.

4. That there was due for quarterly interest by the defendants to the plaintiff the sum of five hundred and twenty-eight $\frac{33}{100}$ dollars, ($528.33,) on the several first days of April, 1870; July, 1870; October, 1870; January, 1871; and April, 1871; and that the defendants are indebted to plaintiff in the sum of four hundred and forty $\frac{75}{100}$ dollars, ($440.75,) which they withheld from plaintiff without his consent, and notwithstanding his protest; and which said sum was withheld from plaintiff by defendants on the pretext of a city tax of one per cent. upon each quarterly instalment of interest.

5. That the withholding of the said one per cent. on the said several instalments of interest on the said city stock was illegal.

6. That defendants are indebted to plaintiff in the sum of four hundred and forty $\frac{75}{100}$ dollars, ($440.75,) with interest on the sum of eighty-eight $\frac{15}{100}$ dollars, ($88.15,) from first day of April, 1870; and on a like sum from the first day of July, 1870; and on a like sum from the first day of October, 1870; and on a like sum from first day of January, 1871; and on a like sum from first day of April, 1871. Wherefore plaintiff demands judgment for said sum of four hundred and forty $\frac{75}{100}$ dollars, ($440.75,) with interest on the sum of eighty-eight $\frac{15}{100}$ dollars, ($88.15,) from first day of April, 1870; and on a like sum from the first day of July, 1870; and on a like sum from the first day of October, 1870; and on a like sum from first day of January, 1871; and on a like sum from first day of April, 1871, and costs.

PORTER & CONNER,
Plaintiff's Attorneys.

SOUTH CAROLINA,
Charleston County:

John C. Cochran, duly sworn, says that he is the agent for the plaintiff in this action; that the foregoing complaint is true to his own knowledge. Deponent further says that the reason why the verification is not made by plaintiff is that the plaintiff resides without the county and State.

JOHN C. COCHRAN.

Sworn to before me this 1st day of September, 1871.

F. A. MITCHELL,
Notary Public.

20.21 (Endorsed:)

I acknowledge due service of summons and complaint in this case, and appear for the city counsel of Charleston.

5th September, 1871.

(Signed) W. ALSTON PRINGLE,
Recorder of Charleston.

Amount of city of Charleston stock held by W. C. Murray, upon which a tax of 1 per cent. per annum has been levied and taken by the city.

		An'l Int.	Qr. Int.
1. Scrip No. 6117 for	$17,280		
6131	770		
6130	5,040		
6129	2,000		
6128	3,000		
6127	1,326		
663	9 33		
6152	110		
7939	200		
362	277		
249	477		
642	991		
113	477		
1292	1,021		
1067	1,230		
1069	1,040		
Annual interest on $35,262 33 is		$2,115 72	$528 93
Interest received from the city paid by city, April, 1870		440 78	
Withheld by the city		88 15	
			528 93
Paid by city July, 1870		440 78	
Withheld by city		88 15	
			528 93
Paid by city Oct., 1870		440 78	
Withheld by city		88 15	
			528 92
Paid by city April, 1871		881 56	
Withheld by city		176 30	
			1,057 86
Interest to 1st April, 1871, 15 mos			$2,644 65
Less amount withheld by city			440 75
Paid W. C. Murray			$2,203 90

(Signed) JNO. C. COCHRAN, *Attorney.*

22, 23 *Answer to complaint.*

STATE OF SOUTH CAROLINA,
Charleston County:

In the common pleas.

WILLIAM C. MURRAY, PLAINTIFF,
against
THE CITY COUNSEL OF CHARLESTON, DEFENDANT.

The defendant, answering plaintiff, says that they deny each and every allegation in his said complaint, except as hereafter admitted.

I. Defendant admits that it is a public corporation, created by the laws of South Carolina.

II. It admits that the plaintiff is the holder of six per cent. stock of the city of Charleston, as in the second allegation of his said complaint alleged.

III. The defendant has no knowledge as to whether the plaintiff is not a resident of the city of Charleston and State of South Carolina, except that derived from his allegation.

IV. This defendant admits that there was due for quarterly interest the sum of five hundred dollars, as alleged in the fourth allegation of said plaintiff's complaint, but they deny that they are indebted to plaintiff in the sum of four hundred and forty and $\frac{75}{100}$ dollars as in said allegation alleged; but they admit that they withheld from plaintiff the said sum of four hundred and forty and $\frac{75}{100}$ dollars, one fourth of one per cent., and not one per cent. as alleged, upon each quarterly installment of interest.

V. The defendants deny that the withholding of the said one-quarter of one per cent. (and not one per cent., as alleged,) was illegal.

24, 25 VI. The defendants deny that they are indebted to the plaintiff in the sum of four hundred and forty and $\frac{75}{100}$ dollars, as alleged in the sixth paragraph of the said complaint, or any part thereof; and further deny that they are indebted to the said plaintiff as alleged in said paragraph for the interest on the said several amounts of eighty-eight and $\frac{75}{100}$ dollars, and for a first defence to this action the *plaintiff* says:

That they withheld the said four hundred and forty and $\frac{75}{100}$ dollars, ($440.75,) pursuant to the provisions of an ordinance to raise supplies for the fiscal year ending December 31, 1870, ratified March 22, 1870, and a similar ordinance ratified March 1, 1871, which are as follows:

STATE OF SOUTH CAROLINA.
City of Charleston.

An ordinance to raise supplies for the fiscal year ending December 31st, 1870.

Be it ordained by the mayor and aldermen of the city of Charleston, city council assembled:

SECTION I. That the city appraiser is hereby authorized to assess a tax of two cents upon the dollar of the value of all real and personal property in the city of Charleston, for the purpose of meeting the expenses of the city government for the current fiscal year.

SECTION II. The taxes assessed under the ordinance, except such as are otherwise directed, shall be payable in three equal parts; one part on or before the tenth day of April next, another part on or before the last day of June next, and the third part on or before the last day of September next.

SECTION III. The taxes assessed on city stock shall be retained by the city treasurer out of the interest thereon, when the same is due and payable.

Ratified in city council this 22d day of March, in the year of our Lord one thousand eight hundred and seventy.

Attest: WILLIAM R. MITCHELL,
Clerk of Council.

[L. S.] G. PILLSBURY, *Mayor.*

26, 27 STATE OF SOUTH CAROLINA,
City of Charleston.

An ordinance to raise supplies for the fiscal year ending December 31st, 1871.

Be it ordained by the mayor and aldermen of the city of Charleston, in city council assembled:

SECTION I. That the city appraiser is hereby authorized to assess a tax of two cents upon the dollar of the value of all real and personal property in the city of Charleston, for the purpose of meeting the expenses of the city government for the current fiscal year.

SECTION II. The taxes assessed under this ordinance, except such as are otherwise directed, shall be payable in three equal parts; one part on or before the tenth day of April next, another part on or before the last day of June next, and the third part on or before the last day of September next.

SECTION III. The taxes assessed on city stock shall be retained by the city treasurer out of the interest thereon, when the same is due and payable.

Ratified in city council this 21st day of March, one thousand eight hundred and seventy-one, and in the ninety-fifth year of American Independence.

Attest: WILLIAM R. MITCHELL,
Clerk City Council.

[L. S.] G. PILLSBURY, *Mayor.*

These defendants further say that the said stock was duly assessed for taxation pursuant to sections 1, 2, 4 and 7 of an ordinance entitled, "An ordinance to provide for the assessment and taxation of property," approved February 13, 1870; that said ordinance is in strict accordance with the laws of the State of South Carolina: and that the said stock is not expressly exempted from taxation by the ordinance under which it was issued.

Wherefore, *plaintiff* demands judgment and the costs of this action.

D. T. CORBIN,
Defendants' Attorney.

On the 17th day of November, 1871, W. Alston Pringle, city recorder, acknowledge due service of notice of trial, and the case went duly to trial before his honor Judge Graham.

28, 29 WILLIAM C. MURRAY
vs.
THE CITY COUNCIL OF CHARLESTON.

In this action, tried before the court without a jury, I make and file the following findings of fact and conclusions of law:

FINDING OF FACTS.

I. That William C. Murray, the plaintiff, has been since January, 1870, the holder and owner of thirty-five thousand and two hundred and sixty-two dollars and thirty-three cents of six per cent. stock issued by defendants, the interest thereon payable quarterly.

II. That plaintiff is not a resident of Charleston, but a resident of Bonn, Germany.

III. That defendants owed the several sums set forth in the fourth paragraph of the complaint herein, on the several days therein named, and that they paid the same to plaintiff.

IV. That the said several sums which plaintiff alleges were retained by defendants, amounting in all to four hundred and forty and $\frac{77}{100}$ dollars, were by defendants kept as the amount of taxes due from the said plaintiff to the said city, being a tax at the rate of two per cent. per annum upon the principal of said stock, said tax being imposed by virtue of the ordinance of the said city council of Charleston ratified March 22d, 1870, entitled "An ordinance to raise supplies for the fiscal year ending December 31st, 1870," and a similar ordinance ratified March 1st, 1871, to raise supplies for the fiscal year ending December 31st, 1871, and that said stock was not specifically exempted from taxation by the ordinance under which it was issued.

V. That the plaintiff, by his agent, protested against the deduction of said tax, and duly entered his protest on each receipt for interest on said stock.

CONCLUSIONS OF LAW.

I. That the city council of Charleston, as a municipal corporation, has a right, under the constitution and laws of this State, to tax the property of the plaintiff invested in stock issued by it, said *said* stock not being specifically exempted by law from taxation, nor being exempt from taxation by the ordinance under which it was issued.

II. That the city council of Charleston had a right to collect the tax imposed on the property of the plaintiff in said stock by retaining the amount of such tax out of payments made to plaintiff on account of the interest due thereon, and plaintiff cannot recover the same.

Judgment is therefore rendered for the defendants, with costs.

R. F. GRAHAM.

MARCH 10, 1873.

True copy.

JACOB WILLIMAN, *C. C. P.*

30, 31 *Judgment.*

THE STATE OF SOUTH CAROLINA,
Charleston County:

WILLIAM C. MURRAY
vs.
THE CITY COUNCIL OF CHARLESTON.

The issues in this action having been brought on for trial before

honor. Judge R. F. Graham, (a trial by jury having been duly waived,) at a court held on the second Monday of June, A. D. 1872, and the issues having been tried and a verdict for the defendant having been duly rendered on the tenth day of March, 1873:

Now, on motion of D. P. Corbin, defendants' attorney, it is adjudged that said defendants recover of said plaintiff ninety dollars, the costs of this action.

(Signed) D. P. CORBIN,
Def'ts' Att'y.

(Signed) JACOB WILLIMAN, *C. C. P.*, &c.

(Endorsed:) Filed 15th April, 1873. Roll 13591.

A true and correct copy of the judgment on file and of record in this office.

[SEAL.] JACOB WILLIMAN,
C. C. P.

(Endorsed:) Filed 25 April, 1873.

ALBERT M. BOOZER,
Clerk Supreme Court.

32, 33 And the said plaintiff duly filed and served notice of appeal, as follows:

STATE OF SOUTH CAROLINA,
City of Charleston:

Court of common pleas.

WILLIAM C. MURRAY, PLAINTIFF,
vs.
THE CITY COUNCIL OF CHARLESTON, DEFENDANT.

The defendant will take notice that the plaintiff appeals from the judgment rendered in this case, on the following grounds:

1. That plaintiff, being resident in a foreign country, is not liable to the tax levied and retained by the city council.
2. That the laws of the State do not authorize the city council to levy and retain a tax upon its own stock.

34, 35 3. That the levying and retaining of said tax is a violation of good faith in the contract of loan and impairs the obligation of said contract, and is, therefore, unconstitutional and void.

PORTER & CONNER,
Plaintiff's Attorney.

(Endorsed:)

I accept service, and undertaking waived.

W. ALSTON PRINGLE,
For Defendant.

APRIL 5TH, 1873.

Points and authorities, for appellant.

1. Plaintiff, being a resident of Germany, is not liable to any tax on his stock.

The interest which a stockholder has in the stock of a corporation is

personal, and is controlled by the law of his domicil. (McKeen vs. Northhampton Co., 13 Wright, Penn. R., 519; Northern Central R. R. vs. Jackson, 7 Wall., 262; Cleaveland, &c., R. R. Co. vs. State of Pennsylvania, December term, 1872, Supreme Court U. S.)

2. To tax the stock is to violate the engagement of the city council, to impair the obligation of its contract.

Nor is there any tacit reservation of the general right to tax property. This cannot be supposed, because it involves two contradictory things; the obligation to pay a certain amount, and the right to withhold part of it.

Nothing short of an express reservation can support the pretension to tax a fund borrowed, and for which a certain rate of interest is agreed to be paid.

The exercise of the right to tax would have no limit but the will of the borrower.

The power to tax is a power to destroy; and the sovereignty of the State in the article of taxation itself is subordinate to and must be controlled by the Constitution of the United States. (McCulloch vs. Maryland, 4 Wheat., 427.)

When the interest has been paid according to contract, and the money become mingled with other moneys of lender, it may properly become the subject of taxation.

36, 37 The creditor cannot be otherwise acted upon than any and every other possessor of money.

When government contracts with an individual, it becomes itself a moral agent, and like any other individual. Its promises ought to be considered as excepted out of its power of legislation.

"It is in theory impossible to reconcile the two ideas of a promise which obliges with a power to make a law which can vary the effect of it." This is the great principle in the case.

The holder of stock does not escape taxation, because the property he buys with the interest becomes liable.

The lender takes a lower rate of interest than generally prevails, and may be supposed to have discounted the tax to pay the tax or buy exemption from it. (Alex. Hamilton's report on the public credit, in 1795, 3 vol. Hamilton's Works, 514.)

3. No State shall pass any law impairing the obligation of contracts. (Cons. U. S., art. 1, sec. 10.)

Nor can any city which derives its authority from the State.

The ordinance to retain a part of the interest agreed to be paid is an act impairing the obligation of a contract.

This is a tax upon the contract subsisting between the government and the individual; and it bears directly upon the contract while subsisting and in force. (Weston and the city council, 2 Peters, 465.)

In Jellison vs. Lee, (3 Woodbury & Minott, 376,) Woodbury, Justice, treats the question of government taxing its own stock as settled by Hamilton's argument; and he says that an attempted deduction from the amount the debtor promises to pay, whether it be in form of a tax or a commission, amounts to a virtual violation of the promise to pay that precise sum.

Court of common pleas.

SOUTH CAROLINA,
Charleston County:

I hereby certify the foregoing to be a true and correct exemplification of the proceedings filed and of record in my office.

[SEAL.] JACOB WILLIMAN, *C. C. P.*

APRIL 17, 1873.

Filed 25th April, 1873.

ALBERT M. BOOZER,
Clerk Supreme Court.

38, 39 In the supreme court, April term, 1874.

THE STATE OF SOUTH CAROLINA:

R. C. JENKINS, APPELLANT,
vs.
CITY COUNCIL OF CHARLESTON, RESPONDENT.

ENOCH PRATT, APPELLANT.
vs.
SAME, RESPONDENT.

G. W. BROWN, APPELLANT,
vs.
SAME, RESPONDENT.

W. C. MURRAY, APPELLANT.
vs.
SAME, RESPONDENT.

ELIZA M. BONNEAU, APPELLANT,
vs.
SAME, RESPONDENT.

40, 41 *Opinion.*

MOSES, C. J.:

The general powers of the city council of Charleston "to make such assessments on the inhabitants of Charleston, or those who lease taxable property within the same, for the safety, convenience, benefit, and advantage of the city as shall appear to them expedient," is not disputed on the part of the appellants. Whatever may be the extent of its authority in this regard, or how far the legislature may have devolved upon it any of its own attributes of sovereignty, so far as the taxing power is concerned, within its municipal limits, the only questions raised in the cases are—

1st. Can the city of Charleston tax its own stock? and,

2nd. If it is vested with this right, can it exercise it as to such of its stock as is held by non-residents?

The argument on the general question was rested alone by the appellants on the ground that the tax imposed by the corporation impaired the obligation of the contract which existed between the holder of the stock and the city. That a contract was created imposing obligations on both

parties, binding them to its performance according to its true intent, is too plain for doubt. The States are prohibited by the 10th sect. of 1st article of the Constitution from passing any "law impairing the obligation of contracts," and if this right of the city council to lay the
42, 43 tax in question, which it could only exercise through the powers granted by its charter, is in violation of the said prohibition, it follows as an inevitable consequence that the parties must be relieved of the tax of which they complain.

Taxation is a power not only necessary but indispensable to government. Its exercise by the States can only be controlled by constitutional limitations. While these are observed and recognized, the wise and prudent enforcement of the power must depend on the wisdom and discretion of those to whose hands the prerogative is entrusted. The mere possession of governmental powers, without adequate means of execution for the public good, would be but as a "barren sceptre" for defence. There may be other limitations, as where the power is resorted to for the purpose of attaining an end which under the taxing power would not be legitimate; as, for instance, if under the guise of a tax the legislature designed to inflict a penalty. Mr Cooley, in his Constitutional Limitations, p. 129, says: "Where the power which is exercised is legislative in its character, the courts can enforce only those limitations which the constitution imposes, and not those implied restrictions which, resting in theory only, the people have been satisfied to leave to the judgment, patriotism, and sense of justice of their representatives."

The general power being inherent in the government, those who deny the existence of the particular right sought to be enforced must
44, 45 show it as clearly forbidden by positive declaration, or arising from an implication too clear to be resisted. If the right of taxation existed as a power in the government at the time of the contract, and so entered into it as to become one of its necessary elements and attributes, then the obligation of the contract is not impaired by the imposition of the tax, because it was a property which attached to the contract and became one of its controlling attributes.

All property is held by individuals subject to the exercise by the State of the sovereign power which it holds over it. Where the State creates a municipal corporation, it devolves upon it a portion of that power to the extent conferred by its charter. Whatever right it can exercise through its substitution in the place of the State, within its prescribed terminal boundaries, is by force of the very sovereign power which attached to the State. The duties of such a corporation are civil and political, as well as municipal. Where the right to tax has been conferred upon a body of that character, the intention to surrender it generally, or in any particular instance, must be shown by express act, as we have said in regard to its relinquishment by the State, by plain and unmistakable intent. In the language of Ohio Life & Trust Company vs. Debolt, (16 How., 435,) referring to Billings vs. Providence Bank, and the case of the Charles River Bridge Company, "by words too plain to be mistaken."

Mr. Dillon, in his Treatise on Municipal Corporations, sect. 580,
46, 47 says: "The power of taxation and the power of eminent domain, subject to both of which all private property is held, although they both originate in political necessity, are in their nature materially different. For taxes paid, or money exacted under the taxing power, no direct specific compensation is made; but where property is taken under the right of eminent domain, this can be done only to the limited extent

required by the particular object or enterprise in favor of which it is exercised, and then only on the condition of making to the owner direct and full compensation in money for the particular and unequal sacrifice which he would otherwise be obliged to make for the public benefit." The power of taxation is at least as high a prerogative of government as that of eminent domain; for, while taxation does take private property for public use, it acts in this particular instance without the correlative obligation of compensation, for the reason that in the one case the property of an individual is taken for the public good and made subservient to it, without including other property similarly situated, while in the other all property of the same kind is held subject to the imposition of a tax, and must contribute to the fund which it is proposed to raise.

In West River Bridge Co. vs Dix, 6 How., 507, while it was admitted that the charter was a contract between the State and the company, it was held "that the right of eminent domain did not interfere with the inviolability of contracts; that all contracts are made subject
48, 49 to that right, and the contract in question was not violated by its exercise."

In the opinion of the court, it is said: "But into all contracts, whether made between States and individuals, or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself; they are superinduced by the pre-existing and higher authority of the laws of nature, of nations, or of the community to which the parties belong; they are always presumed, and must be presumed, to be known and recognized by all; are binding upon all, and need never therefore be carried into express stipulations, for this could add nothing to their force. Every contract is made in subordination to them and must yield to their control, as conditions inherent and paramount, whenever a necessity for their execution shall occur. Such a condition is the right of eminent domain."

At page 531, it is said: "No State, it is declared, shall pass a law impairing the obligation of contracts; yet, with this concession constantly yielded, it cannot be justly disputed that in every political sovereign community there inheres necessarily the right and the duty of guarding its own existence and of protecting and promoting the interests and welfare of the community at large." And on page 532: "This power denominated the eminent domain of the State is, as its name imports, paramount to all private rights vested under the government, and these last are by necessary implication held in subordination to this power, and must yield in every instance to its proper exercise."

50, 51 It is impossible not to perceive that the same principle which ran through and controlled the judgment in that case must apply where it is sought to resist the payment of a tax, because its imposition interfered with the inviolability of a contract. Taxation is in every regard as much an inherent power of government as is that of eminent domain. M'r Justice Woodbury, in a separate opinion in the same case, p. 539, says: "I take the liberty to say then, as to the cardinal principle involved in this case, that in my opinion all the property in a State is derived from, or protected by, its government, and hence is held subject to its wants in taxation, and to certain important public uses both in war and peace." At p. 542, he says: "And because on a like principle taxes may be imposed on such property, as well as all other property, though coming by grant from the State, and may be done without violation of the contract, when there is no bonus paid or stipulation made in the charter not to tax it. This is well settled."

In Gilman vs. The City of Sheboygan, (2 Black, 513,) M'r Justice Swayne said: "The act of 1854 authorized the borrowing of money, the issuing of bonds, and the levying of a tax upon all the property in the city for the purposes specified. The imposition, modification, and removal of taxes, and the exemption of property from such burdens, is an ordinary exercise of the power of State sovereignty. There is no pledge, express or implied, that this power should not thereafter be exercised."

52, 53 In Providence Bank vs. Billings, (4 Pet., 562,) Chief Justice Marshall, delivering the opinion of the court, said: "The power of legislation, and consequently of taxation, operates on all the persons and property belonging to the body politic. This is an original principle which has its foundation in society itself. It is granted by all for the benefit of all. It resides in government as a part of itself, and need not be reserved when property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burthens, and that portion must be determined by the legislature."

In Brewster vs. Hough, (10 N. H., 143,) "the power of taxation" is said "to be essentially a power of sovereignty or eminent domain."

M'r Justice McLean, in delivering the opinion of the court in State Bank of Ohio vs. Knopp, (16 How.,) said: "The power of taxation has been compared to that of eminent domain, and it is said, as regards the question before us, they are substantially the same. These powers exist in the same sovereignty; but their exercise involves different principles. Property may be appropriated for public purposes, but it must be paid for. Taxes are assessed on property for the support of the government under a legislative act."

54, 55 Is there anything in the contract itself which, by necessary implication, can be construed into a stipulation or covenant for exemption of taxation by the city? The contract remains undisturbed, unchanged. The obligation on the city to pay the annual interest is not denied. The performance of all it imposes is admitted, and the agreement remains as perfect in form, and as binding in effect, as when it was first executed. But it is said, if the city assesses a tax on the value of the stock, the holder does not receive the amount of the interest agreed to be paid. It is diminished to the extent of the tax. This result, however, is not affected by any change of the contract, or refusal of the council to recognize it as imposing on them a liability to pay the accruing interest; but the stock becomes less valuable to the holder, because the authority representing it, to a certain extent the sovereignty of the State, interposes and lays a charge upon it for public purposes through a tax. The same consequence follows from the imposition of taxes by the city on all other property admitted to be liable to it. The tax on real property and on that of personal, having a tangible form to the extent of its demand, lessens the value of such property. The tax from income, no matter from whatever source derived, necessarily reduces the amount. It is difficult to perceive why the proposition now insisted on by the appellants may not as well apply to the whole principle on which the right to tax is founded.

56, 57 In the case of Providence Bank vs. Billings, already referred to, Chief-Justice Marshall uses this language: "If the power of taxation is inconsistent with the charter, because it may be so exercised as to destroy the objects for which the charter is given, it is equally inconsistent with every other charter, because it is equally capable of working the destruction of the objects for which every other charter is

given. If the grant of a power to trade in money to a given amount implies an exemption of the stock in trade from taxation because the tax may absorb all the profits, then the grant of any other thing implies the same exemption, for that thing may be taxed to an extent which will render it totally unprofitable to the grantee. Land, for example, has in many, perhaps in all the States, been granted by Government since the adoption of the Constitution. This grant is a contract, the object of which is that the profit issuing from it shall enure to the benefit of the grantee. Yet the power of taxation may be carried so far as to absorb these profits. Does this impair the obligation of the contract? The idea is rejected by all, and the proposition appears so extravagant that it is difficult to admit any resemblance in the cases. And yet, if the proposition for which the plaintiffs contend be true, it carries us to this point. That proposition is, that a power which
58, 59 is in itself capable of being exerted to the total destruction of the grant is inconsistent with it, and is therefore impliedly relinquished by the grantor, though the language of the instrument contains no allusion to the subject. If this be an abstract truth, it may be supposed universal. But it is not universal, and therefore its truth cannot be admitted in these broad terms in any case. We must look for the exemption in the language of the instrument, and if we do not find it there it would be going very far to insert it by construction."

Mr Blackwell, in his work on tax titles, p. 8, says: "If the tax is laid to raise a revenue for the expenses of the State, it should be laid equally on all the property in the State." A resident of Charleston might convert his entire property into city stock, and according to the proposition contended for on the part of the appellant, while enjoying all the protection which the corporation affords to him and all others in its limits, may contribute nothing to its support, not even to the very taxes through which the interest on his own stock is to be raised. The holders of all other property are to be assessed, while he, reaping all the advantages, bears none of the burthens of a property-holder.

Nor can the fact that the right may be abused operate to de-
60, 61 feat its exercise. The same argument would apply to destroy all the functions of government. As was said by Ch.-J. Marshall, in his opinion from which we have already cited: "However absolute the right of an individual may be, it is still in the nature of that right that it must bear a proportion of the public burthens, and that portion must be determined by the legislature. The vital power may be abused, but the Constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the State government. The interest, wisdom, and justice of the representative body, and its relations with its constituents, furnish the only security, where there is no express control against unjust and excessive taxation, as well as against unwise legislation generally."

Regarding, then, city stock as personal property, liable to the tax imposed, it remains to be considered whether such stock held by non residents can be taxed by the said corporation. The right is resisted entirely on the ground that personal property has no situs in itself, but follows the domicil of its owner. But this is not true as a general and unvarying rule, for its application will be found to be trammelled and encumbered with so many exceptions, that the principle upon which its very existence depends is not only affected, but destroyed. Per-
62, 63 sonal property of a visible and tangible kind is taxed where it is found, without regard to the residence of the owner, and his domicil in one State will not so affect the possession of property

beyond it as to subject it to taxation by the State in which he resides. If the rule contended for is without restriction, then the right to tax would be regulated, not by the actual situs of such personal property, but by the domicil of the owner.

Mr Story, in his Conflict of Laws, sect. 380, referring to the principle, says that "Lord Loughborough has stated it with great clearness and force in one of his most elaborate judgments." Sible vs. Worswick, 1 H. Blk., 690.) "It is a clear proposition," said he, "not only of the law of England, but of every country in the world where law has the semblance of science, that personal property has no locality. The meaning of that is, not that personal property has no visible locality, but that it is subject to that law which governs the person of the owner, both with respect to the disposition of it and with respect to the transmission of it, either by succession or by the act of the party." He evidently here restricts the rule to the disposition and transmission of such property. Chan. Kent, in the 2nd vol. of his Commentaries, p. 406, refers to the rule as a "fiction of law," and says: "It may now be considered
61, 65 as part of the settled jurisprudence of this country that personal property, as against creditors, has locality, and the lex loci rei sitæ prevails over the law of the domicil with regard to the rule of preference in the case of insolvents' estates." So, too, in regard to attachment laws, or any proceeding by which the court, not having jurisdiction of the person, obtains control of the property by its process against it, and makes it amenable to its judgment, thus acting on the party through his property, wherever the latter may be found, without respect to his domicil.

Mr Story, in the same work just referred to, sect. 550, himself says: "The general doctrine is not controverted that, although movables are for many purposes to be deemed to have no situs except that of the domicil of the owner, yet this being but a legal fiction, it yields whenever it is necessary for the purposes of justice that the actual situs of the thing should be examined." Does it consist with our idea of the justice which should govern the daily transactions of men that the State which protects the property, that by its proper and discreet management gives it additional value, should not receive the consideration for these results in contribution to its expenses, while the State which
affords it no protection and adds nothing to its value should con-
66, 67 trol it through the mere domicil of the holder? If it cannot do this as to visible and tangible property, on what principle can the right be claimed as to stock, because it is a thing incorporeal? The chose has value as well as the visible property. While the use of the latter may yield its possessor income, the stock does the same thing, and in the very place where it was issued. In Hoyt vs. The Commissioners of Taxes, 23 N. Y., 228, in the opinion of the court, by C. J. Comstock, it is said: "These and other illustrations which are mentioned demonstrate that the fiction of maxim mobilia personam sequuntur is by no means of universal application. Like other fictions, it has its special uses. It may be resorted to when convenience and justice so require. In other circumstances, the truth, and not the fiction, affords, as it plainly ought to afford, the rule of action. * * * Accordingly, there seems to be no place for the fiction of which we are speaking in a well-adjusted system of taxation."

In Green vs. Van Buskirk, 7 Wal. 139, it was held that "the fiction of law that the domicil of the owner drew to it his personal estate, wherever it may happen to be, yields whenever, for the purposes of justice, the actual situs of the property should be examined."

The case of Cleveland, Painsville and Ashtabula R. R. Co. vs. Pennsylvania, 15 Wall., 300, is much relied on by the appellants; but we do not think that the ruling there can sustain the proposition on which
68, 69 the cases here depend. There the question presented, as the opening remarks of the opinion admits, "applies to the interest on bonds of the railroad company, made and payable out of the State, issued to and held by non-residents of the State, citizens of other States." The stock involved here was issued by the city of Charleston, payable and transferable there; and there alone can renewals of certificates in case of loss be obtained. The opinion in the case just referred to admits that the situs of public securities does not depend on the domicil of the owner. On page 323 it is said: "It is undoubtedly true that the actual situs of personal property which has a visible and tangible existence, and not the domicil of its owner, will in many cases determine the State in which it may be taxed. The same thing is true of public securities, consisting of State bonds and bonds of municipal bodies, &c.; but other personal property, consisting of bonds, mortgages, and debts generally, has no situs independent of the domicil of the owner." A clear and manifest distinction is here drawn between bonds of municipal corporations and those of private bodies and individuals. The title to bonds and debts generally can not only be transferred anywhere, and legal demand of payment made on the debtor and suit brought wherever he may be found, or, he being absent and his goods present, they may by attachment proceeding be subjected to their payment, but the debt of the municipal corporation is only transferable and demandable at its
70, 71 office, and it can only be sued in a court which has jurisdiction over the territory within which its own limits are prescribed. All the qualities which surround it seem to give it a local existence, so far as its issue, its transfer, and payment are concerned.

We are sustained in the views which have induced our conclusion by the opinion of Chief Justice Waite in the case of Tappan vs. Merchants' Bank of Chicago, Supreme Court of the United States, December term, 1873. He says, in the course of it, that "shares of stock in national banks are personal property. They are a species of personal property which is in one sense intangible and incorporeal, but the law which creates them may separate them from the person of their owner for the purpose of taxation, and give them a situs of their own * * * * *. The shareholder is protected in his person by the government at the place where he resides, but his property in this stock is protected at the place where the bank transacts its business. If he were a partner in a private bank doing business at the same place, he might be taxed there on account of his interest in the partnership. It is not easy to see why, upon the same principle, he may not be taxed there on account of his stock in an incorporated bank. His business is there as much in the one case as in the other. He requires for it the protection of the govern-
72, 73 ment there, and it seems reasonable that he should be compelled to contribute there to the expenses of maintaining that government. It certainly cannot be an abuse of legislative discretion to require him to do so."

Objection has not been urged in the argument as to the particular mode provided by the ordinances for the collection of the tax. If the party was liable to the tax, it worked no injury to him. Resort to summary proceedings at variance with the general spirit of our laws has been allowed against delinquent tax-payers, and has been permitted very much by the necessity of the occasion, which requires energy and prompt-

ness in collecting the public dues of that character. (State vs. Allen, 2 McC., 59; Blackwell on Tax-titles, 28.) A resident of the city might convert his whole estate into such stock and the corporation left without remedy for the tax assessed upon it, unless it could be deducted from the interest payable to the holder. A non-resident holder of such stock could be reached for the tax in no other way.

All the cases involve the same questions, and the motion in each is dismissed.

Filed 6 October, 1874.

ALBERT M. BOOZER,
Clerk of Supreme Court.

WRIGHT, associate justice, concurs.

WILLARD, associate justice, dissents. The following is his separate opinion:

74, 75 *Opinion.*

WILLARD, associate justice:

In my judgment it is not necessary to consider the question whether the attempt by the city government to impose the tax in question was an act tending to violate the obligation of a contract. If the constitution of the State or the statutes conferring the taxing power upon the defendants had that effect, the question would properly arise. I am satisfied that neither the constitution nor the statutes conferring municipal powers on the city government are to be construed as supporting the exercise of the taxing power called in question in the present case.

The plaintiff is not a resident or inhabitant of the city of Charleston, nor is he liable to taxation there for municipal purposes as the owner or holder of either real or personal property within that city. There is no special authority conferred either by the constitution or the statutes to reach the imposition of a tax in such a case, nor can it be implied from the general authority to levy and collect taxes.

In order to impose a tax there must be a person liable to taxation either directly, as in the case of a poll-tax, or by reason of some subject of taxation, either real or personal property, within the taxing jurisdiction.

76, 77 The grant of authority to the city government to tax is limited by the nature of taxation and the rules of law governing its exercise, and where the statute is silent on the subject the courts are competent to apply the limitations thus imposed by the recognized principles applicable to the case.

The only ground on which the tax before us can be supported is, that the plaintiff was the owner of city stock. In substance and legal effect the city stock is merely the evidence of debt due from the city to the holder of its stock. It bears no analogy to stock in an incorporated company, as in the latter case the stockholder is part owner of the capital and earnings of the company, while the holder of the city stock has no right beyond that of claiming a sum certain, and interest at an agreed rate.

The question then resolves itself into this: whether the city can impose upon the non-resident holder of its obligation any part of the duty of supporting the municipal government. It is clearly against reason and justice. It is a case of a debtor claiming support from his creditor while acquiring the means of paying his debts.

A principle so clearly wrong needs no elucidation; nor need it be encumbered with laborious considerations of the legal idea of the situs of property. It is simply an abuse of the taxing power, recognized at
78, 79 once by the application of those rules of right-dealing that are open as well to the common sense of the community at large as to those fettered by legal learning.

Filed 6 October, 1874.

ALBERT M. BOOZER,
Clerk of Supreme Court.

80 THE STATE OF SOUTH CAROLINA:

Supreme Court.

WILLIAM C. MURRAY, APPELLANT,
vs.
THE CITY COUNCIL OF CHARLESTON, RESPONDENT.

Appeal from first circuit, Charleston County. Docketed April term, 1873.

Mess'rs Porter & Conner, for appellant.

Mr Seabrook, for respondent.

Judgment.

The motion of appellant is dismissed.

Filed 6 October, 1874.

Witness my hand and the seal of the court, at Columbia, this 23rd day of October, one thousand eight hundred and seventy-four.

[SEAL.] ALBERT M. BOOZER,
Clerk of Supreme Court.

To JACOB WILLIMAN, Esq.,
Clerk Circuit Court Charleston County.

Certified 23 October, 1874.

ALBERT M. BOOZER,
Clerk of Supreme Court.

81 (Indorsed:) The State of South Carolina. Supreme court. William C. Murray, appellant, vs. The City Council of Charleston, respondent. Appeal from Charleston County. Judgment certified. To Jacob Williman, esq., clerk of circuit court for Charleston County.

82 THE STATE OF SOUTH CAROLINA:

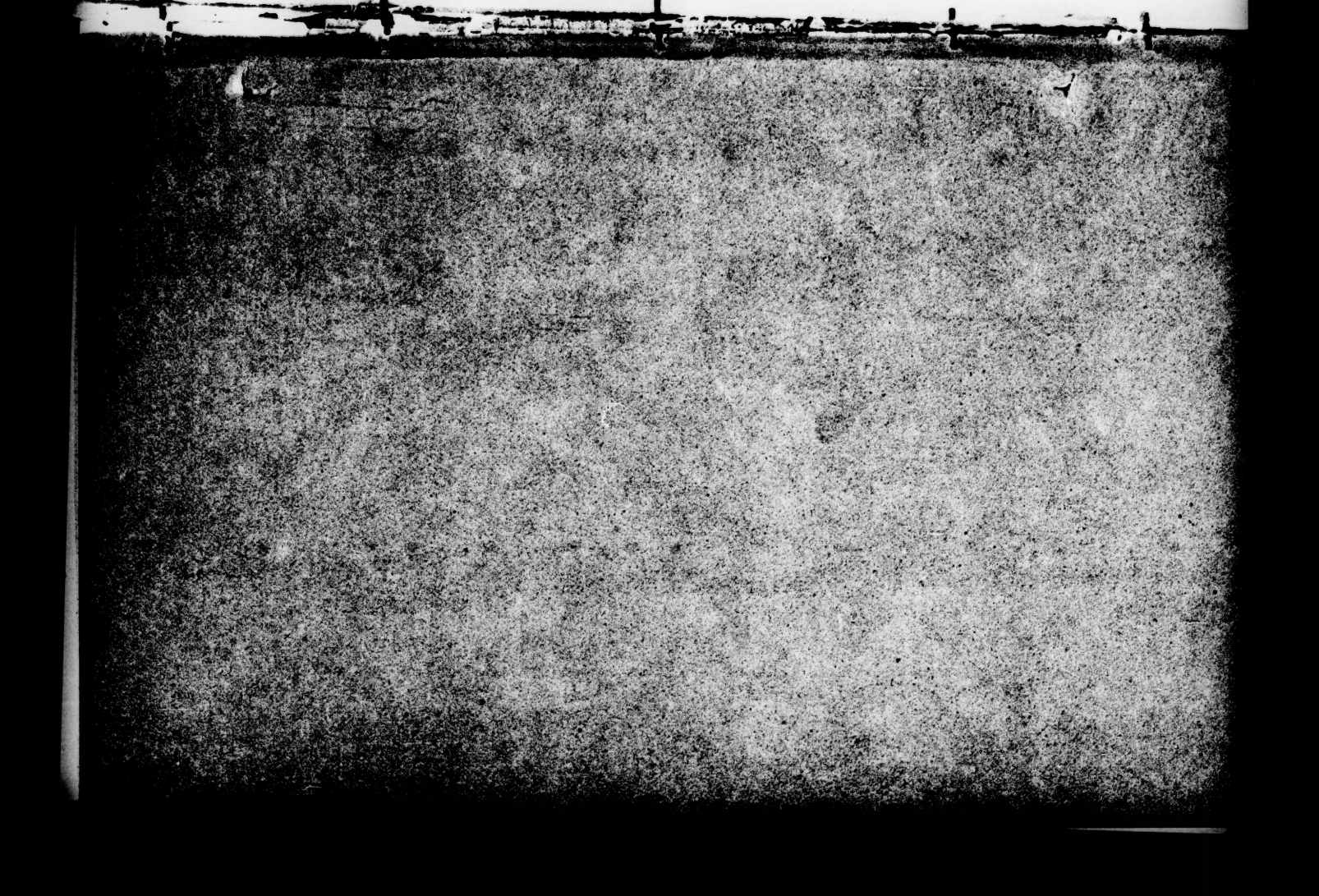
In the supreme court.

I, Albert M. Boozer, clerk of the supreme court of the State of South Carolina, hereby certify that the foregoing and annexed 81 pages contain the original writ of error, citation and service thereof, with copy of writ of error bond filed and approved therein, together with a true and complete transcript of the record, process and proceedings, and final judgment in a certain cause lately pending in said court, wherein William C. Murray was plaintiff and appellant and The City Council of Charleston was defendant and respondent, as the same remains of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court at Columbia, in said State of South Carolina, this 6th day of August, A. D. 1875, and in the 100th year of the Independence of the United States of America.

[SEAL.] ALBERT M. BOOZER,
Clerk of the Supreme Court of the State of South Carolina.

Indorsement on cover: No. 95. William C. Murray, plaintiff in error, vs. The City Council of Charleston. South Carolina sup. court. Filed 18th August, 1875.



Supreme Court of the United States.

WM. C. MURRAY
vs.
CITY COUNCIL OF CHARLESTON } *No. 95.*

THOMAS C. JENKINS
vs.
SAME. } *No. 237*

P. PHILLIPS,
JAS. B. CAMPBELL,
Solicitors for Defendant in Error.

10 *Nov.* 77.

R. O. Polkinhorn, Printer, 632 and 634 D Street, Washington, D. C.

Supreme Court of the United States.

WM. C. MURRAY
vs.
CITY COUNCIL OF CHARLESTON. } *No. 95.*

THOMAS C. JENKINS
vs.
SAME. } *No. 237*

The plaintiffs assert the right to recover from the city of Charleston, certain amounts retained as taxes out of the interest due upon city stock held by them.

The cases differ only in this, that in the case of Murray it is averred that he is and has been since 1870, when the stock was acquired, a resident of Bonn Germany.

In the other, Jenkins, is described as a citizen of Maryland, domiciled and residing in the city of Baltimore.

In Murray's case it is shown that he has owned the stock since January, 1870. p 8. In Jenkins' case it is found that a *part* of his stock was owned previous to the 1 January, 1870. p. 6. Thus it does not appear what portion he acquired after his *knowledge of the law which imposed the tax.*

In both cases the answer of the city is, that, as to

the several sums claimed to be due upon the said stock, as interest, the said defendant says, that the same were due to defendant for taxes imposed on said stock, and that the said sums being so due, the city treasurer deducted the same from the several payments of interest made to the plaintiff on behalf of the defendant, and paid the amount, so deducted, in to the treasury of the city council, for its use.

That the said sums, so deducted for taxes, were deducted pursuant to the provisions of an ordinance to raise supplies for the fiscal year ending December 31, 1870, ratified March 22, 1870, and a similar ordinance ratified March 1, 1871.

These ordinances are set forth in the record, and authorize the city appraiser to assess a "tax of two cents upon the dollar of the value of all real and personal property in the city of Charleston."

They also contain this provision :

"The taxes assessed on city stock shall be retained by the city treasurer out of the interest thereon when the same is due and payable."

These cases were submitted to the decision of the court, who, on a finding of the facts, pronounced the law to be, that—

"The city council of Charleston, as a municipal corporation, has the right, under the constitution and laws of the State, to tax the property of the plaintiff invested in stock issued by it ; said stock not being specifically exempted by law from taxation by the ordinance under whch it was issued.

"2. That the city council has the right to collect

the tax by retaining the amount of such tax out of payments made to the plaintiff on account of the interest due thereon."

Appeals were taken to the Supreme Court of the State.

By Jenkins, on the ground that the plaintiff, being a *non-resident* of the State, the ordinance and laws of the State authorizing the taxation of the stock impairs the obligation of a contract, and are, therefore, in violation of the Constitution of the United States.

Jenkins' Record, p. 7.

By Murray, on the same constitutional ground, and on the averments that the plaintiff, being a resident of a *foreign country*, is not liable to the tax levied; and that the laws of the State do not authorize the city council to levy and retain a tax upon its own stock.

Murray's Record, p. 9.

On the hearing in the Supreme Court, the judgment in each case was affirmed, and the cases are now here on writ of error under section 709, R. S.

In considering these cases, we have no concern with the question whether the law of the State conferring the taxing power on the city of Charleston was in accord with the constitution of the State, or whether the ordinance under which the tax was laid properly pursued the requirements of that law. These questions have been adjudicated by the Supreme Court of the State, and this adjudication is as conclusive and binding on the Federal courts as on the courts of the State.

The only matter for review within the jurisdiction of the court is, whether this law, and the ordinance made in pursuance thereof, are in violation of that provision of the Federal Constitution which prohibits the States from passing laws impairing the "OBLIGATION OF CONTRACTS."

The court is now invoked to determine the constitutionality of a state of law. How they will proceed in the exercise of this delicate and important duty is well expressed in their latest decision:—

"Every statute (say they) is presumed to be constitutional. The courts ought not to declare one unconstitutional unless it is clearly so. If there is doubt, the expressed will of the legislature should be sustained."

Munn & Scott vs. *People of Illinois*, 94 U. S., 113.

It is asserted that the law which authorized the deduction of the tax on paying the interest on the stock, violates the obligation of the contract by which the city promised to pay to the holders of the stock a certain rule of interest. If this be so, then this court will so declare, for such a law is within the express prohibition of the Federal Constitution.

Such a law is equally void and will so be declared, whether the contract was made with its own citizens or with the citizens of other States, or with subjects of foreign governments. There is nothing in the constitutional provision which justifies a distinction, and this court, in the exercise of its jurisdiction as guardian of that constitution, cannot, on any sound reasoning, make one.

We desire to emphasize the statement, that the sole question this court has power to decide is, whether the State law violates that clause of the Federal Constitution which relates to contracts, and that on such a question the citizenship of the complainant cannot affect the decision.

Thus, if in one of these cases the plaintiff was a citizen of the State, and in another a non-resident, the same judgment which holds the law to violate the contract of the latter must necessarily be rendered in the case of the former, or else we should have the extraordinary conclusion that, in the judgment of the court, the constitutional provision was intended only for the protection of non-residents and foreigners. The numerous decisions which have been made on this constitutional provision forbids the idea that any such conclusion can be reached, for in the great majority of them the court has interposed the shield of the Constitution for the protection of citizens against the laws of their own States.

We are thus emphatic on what would seem to be a palpable truth, for the reason, that it is supposed the decision in the case of "State tax on foreign bondholders," 15 Wall. 300, held the law of Pennsylvania to violate the obligation of the contract because of the non-residence of the holder of the bond. If there be anything in that decision justifying such a conclusion, we submit it should now be reconsidered.

The power of taxation, vital to all governments, is enjoyed by the States of this Union in the fullest manner, except as restrained by the Federal Constitution.

That Constitution prohibits the States from laying duties on "imports or exports" without the consent of the Congress; nor can they without such consent "lay any duty of tonnage."

There is also a limitation on the taxing power, arising by implication, against their taxing any of the means or instrumentalities necessary and proper for carrying into effect the powers granted to Congress.

Then there is also a limitation in the provision securing to the citizens of each State the privileges and immunities of the citizens of the several States, which precludes the State from laying a higher tax on the property of citizens of other States than is levied on like property belonging to its own citizens

Lastly, we have the limitation arising out of the clause we are now considering; as when a State enters into a contract exempting from taxation a given subject. This has been held to be a restraint on the power, which will be protected under this contract clause of the Constitution.

Coming, then, to the question, whether the present tax violates the obligation of the contract entered into by the city, it is observed that we are not now dealing with a question of policy or of ethics, but with a question of power.

In *McCulloch* vs. *State of Maryland*, in which the State law taxing the bank, was held to be void, it is said: "The power of taxation is not confined to people and property of a State. . *It may be exercised upon every object brought within its jurisdiction.*"

"But" (say the court) "to what source do we trace the

right? It is obvious that it is an incident of sovereignty and is co-extensive with that to which it is an incident. All subjects over which the sovereign power of a State extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation."

The sovereignty of a State extends to every thing which exists by its own authority, or is introduced by its permission, but does not extend to those means which are employed by Congress, to carry into execution powers conferred on that body by the people of the United States."

We know of no subsequent decision which in the least impairs the force of this definition.

It was long seriously questioned, whether the legislature could by express exemption from taxation, so bind itself as to preclude it in the future from exercising its sovereign power over this subject.

It has now, however, been settled in this court, that a State by contract *based upon a consideration*, may exempt property from taxation for a specified period or even permanently.

Nevertheless, when the exemption is claimed, it must be clearly established by such means as leave no doubt that this was the intention of the legislature.

It is not essential to the validity of a tax, that it be levied according to the rules of abstract justice.

It is true that it should only be levied for necessary purposes and to advance the public welfare, but what constitutes the public welfare and what the de-

gree of necessity are matters solely within the exercise of legislative discretion?

Courts of justice cannot revise this discretion, but can only enforce those limitations which the constitution imposes, and not those implied restrictions which, resting in theory only, the people have been satisfied to leave to the judgment and sense of justice of their representatives.

Lane Co. vs. *Oregon*, 7 Wall, 77.

In determining whether the law in question impairs the obligation of the contract, we are to look not to the moral, but the legal obligation. "The moral obligation of contracts is, so far as human society is concerned, of an imperfect kind, which the parties are left free to obey or not, as they please. It is addressed to the conscience of the parties, under the solemn admonitions of accountability to the Supreme Being. No human lawgiver can either impair or reach it."

Reading this law in connection with the contract, it is difficult to understand in what particular it interferes with it or impairs its obligation. The agreement is to pay to the holder of the stock seven per cent. interest. The law levies a tax upon the stock. This may lessen the value of the stock, but it violates no provision of the contract.

The State grants land to an individual for a stipulated price; subsequently it annually taxes that property. This lessens its value to the owner, but leaves unimpaired the obligation of the grant.

We insist that the sovereign right of taxation, like

the right of eminent domain, in nowise interferes with the inviolability of contracts. Essential as it is to the well-being of the State, its surrender will never be implied. Those who insist upon its abdication, as already said, must show it by terms so express that there can remain no doubt of the legislative intention. And when contracts are entered into they must be held to have been made with full knowledge of its sovereign power, and subject to its exercise.

These principles are fully sustained by the decision in *West River Bridge* vs. *Dix*, 6 How., 507, where the right of eminent domain was involved, and the argument may with equal justice be applied to the taxing power.

Speaking of this sovereign power of taxation, it is said, in *Providence Bank* vs. *Billings*; "However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion must be determined by the legislature. This vital power *may be abused, but the Constitution of the United States was not intended to furnish the correction of every abuse of power which may be committed by the State governments.*"

4 *Pet*, 563.

Again, in relation to the effect and operation of a tax in impairing the obligation of the contract, it is said: "If the grant of a power to trade in money to a given amount, implies an exemption of the stock in trade from taxation, because the tax may absorb all the profits; then the grant of any other thing implies the same exemption. Land for example, has in many

States been granted since the adoption of the constitution. This grant is a contract, the object of which is that the profits issuing from it, shall accrue to the benefit of the grantee. Yet the power of taxation may be carried so far as to absorb these profits. Does this impair the obligation of the contract? The idea is rejected by all; and yet if the proposition for which the plaintiff contend be true, it carries us to this point."

"That proposition is, that a power which is in itself capable of being exerted to the total destruction of the grant, is inconsistent with the grant and is therefore, *impliedly relinquished by the grantor*, though the language of the instrument contains no allusion to the subject. If this be an abstract truth, it may be supposed universal. But it is not universal, and therefore, its truth cannot be admitted in these broad terms in any case. We must look for the exemption in the language of the instrument, and if we do not find it there, it would be going very far to insert it by construction."

We are not aware that this court has ever had the precise question before it as to the power of the State to tax its own bonds or other securities. Nevertheless, the definition of the taxing power as given in McCullough's case would seem to answer this question fully: "The sovereignty of the State extends to everything which exists by its own authority, or is introduced by its permission."

This subject has been frequently before the State courts, as may be seen in the cases of *Champagne Bank* vs. *Smith*, 7 Ohio State, 42, and *People* vs. *In-*

surance Company, 29 Cal., 533, where the power was sustained.

The political department of this Government has indirectly recognized the principle that taxation of such securities does no violation to the obligation of the contract, for in the laws imposing an income tax it is expressly provided that "income derived from interest upon notes, bonds, and other securities of the United States, shall be included in estimating incomes under this act." (13 Stat., 281, 479.)

This is also the rule under the income tax of Great Britain.

Now, it is no answer to say that the income tax is not a direct tax upon the thing. If it be immoral or illegal to tax directly, it is equally so to reach the same result by indirect methods.

That cannot be a sound rule which makes the thing taxable when taxed with the rest of a man's property of every kind, but untaxable when the thing is alone taxed.

The court could not determine how universal a tax law must be to be operative, or how partial to be inoperative.

The argument for plaintiffs-in-error is rested upon the ground, that the property in the stock had no locality in the city of Charleston, but that its *situs* was regulated by the domicil of the owner.

The fiction of law (say this Court), that the domicil of the owner, draws to it the personal estate which he owns, wherever it may happen to be located, is by no means of universal application, as it yields

whenever it is necessary for the purposes of justice that the actual *situs* of the thing should be examined.

So it has yielded in New York, on the power of the State to tax the personal property of a citizen, situated in a sister State, and always yields to laws for attaching the estate of non-residents, because such laws necessarily assume that property has a *situs* entirely distinct from the owners domicil.

Green vs. *Van Buskirk*, 7 Wall. 150.

In reference to much of the argument on the other side, which relates to the operation of the laws of the domicil, as being those which control the transfer and disposition of personal property, we again quote what was said in the same case:

"We do not propose to discuss the question how far the transfer of personal property lawful in the owners domicil will be respected in the Courts of the country where the property is located and a different rule of transfer prevails. It is a vexed question on which learned Courts have differed, but after all, there is no absolute right to have such transfer respected, and it is only on a principle of comity that it is ever allowed. This principle of comity always yields when the laws and policy of the State, where the property is located, have prescribed a different rule of transfer with that of the State where the owner lives."

And so in *Catlin* vs. *Hall*, 21, Vermont, it is said: "We do not consider the doctrine in relation to the *situs* of personal chattels, and relating to its transfer and distribution, as at all conflicting with the actual

jurisdiction of the State where it is situated over it, or with their right to subject it in common with other property of the State, to share the burden of the government by taxation."

So Chief Justice TILGHMAN holds, "In one sense personal property has locality, that is to say if *tangible*, it has a place in which it is situated and if invisible (*consisting of debts*) it may be said, *to be in the place where the debtor resides;* and of these circumstances the most liberal nations have taken advantage by making such property subject to regulations which suit their own convenience."

Cited in Story's Conflict of Laws, § 383.

In the case of "State Tax on Foreign bondholders FIELD, Justice, delivering the opinion of the court, after declaring the invalidity of the State tax, which required the railroad company to deduct a certain per cent for taxes from the amount of interest due on its bonds so far as these bonds were held by non-residents says: "It is undoubtedly true that the actual situs of personal property which has a visible and tangible existence, and not the domicile of the owner, will in many cases determine the State in which it may be taxed. The same thing is true of public securities consisting of State bonds and *bonds of municipal bodies* and circulating notes of banking institutions, *the former by general usage have acquired the character of and are treated as property in the place where they are found, though removed from the domicile of the owner; the latter are treated and pass as money wherever they are.*"

This announcement, which would seem to be conclusive of this case, is treated by the plaintiffs in error, as mere *dictum*. But we submit that whether *dictum* or not, it announces doctrine which is unassailable.

So much of the decision as rests the unconstitutionality of the law as impairing the obligation of the contract upon the ground that the holder of the bond was a *non-resident*, with the implication that the law would not impair the obligation if held by a citizen, we cannot assent to.

The distinction thus drawn between residents and non-residents was rejected by the dissenting opinion of DAVIS, J., with whom CLIFFORD, MILLER, and HUNT, Justices, concurred; and if such a distinction is operative on the case now before the court, we respectfully submit it ought to be again considered.

The charter of the city under which the ordinance imposing the tax was passed, provides, "that the city council shall be vested with full power and authority to make such assessments on the city of Charleston, or those *who hold taxable property within the same, as shall appear to them expedient.*"

Digest City Laws, Appendix, p. 3.

This charter was granted in 1783, and the Supreme Court of the State has construed it as conferring full authority to pass the ordinance in question.

By this construction the *situs* of this stock for the purposes of taxation is fixed in the city of Charleston, and, as all persons dealing with the city were bound to know the law as construed, it would seem to follow

that the holders of this stock took it subject to the power of the city to tax it.

But can this law of 1783 be held to be within this prohibition of the Federal Constitution?

This is answered in the negative by the decision in *Owens* vs. *Speed*, 5 Wheat. 420, where it is held that the provision of the Constitution—"No State shall pass any law impairing the obligation of contracts," has no operation on a law enacted before the Constitution went into effect, which was on the first Wednesday of March, 1789.

See also *League* vs. *De Young*, 11 How. 203.

It is also insisted that taxation and protection are correlative obligations, and that where there is no protection there can be no taxation.

But the debt due by the city to these plaintiffs was secured by the whole property of the citizens, and on the failure of the city to pay its annual interest a *mandamus* would lie to compel the city to levy a tax upon their property adequate to the fulfilment of the obligation of the contract. The property thus mortgaged for the payment of the obligation is protected by laws, and by expenditures of money adequate to this end.

As is said in *Tappan* vs. *Merchants' Bank*, 19 Wall. 503: "A shareholder is protected in his *person* by the Government under which he resides, but his property in the stock at the place where the bank transacts its business."

We, then, submit that the law which authorized the tax upon this obligation of the city did not, in any constitutional sense, impair the obligation of the contract; and, as this is the only question within the jurisdiction of the court, the judgments must be affirmed.

P. PHILLIPS.
JAS. B. CAMPBELL.
Solicitors for Defendant in Error

10 *Nov.*, '77.

IN THE SUPREME COURT
OF THE UNITED STATES.
No. 95.

WILLIAM C. MURRAY,
PLAINTIFF IN ERROR.

vs.

The CITY COUNCIL of CHARLESTON,
IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

BRIEF OF W. D. PORTER AND JAMES CONNER,
FOR PLAINTIFF IN ERROR.

CHARLESTON, S. C.
WALKER, EVANS & COGSWELL, PRINTERS.
NOS. 3 BROAD & 109 EAST BAY STREETS.
1877.

SUPREME COURT OF THE UNITED STATES.

WM. C. MURRAY, PLAINTIFF IN ERROR,

vs.

THE CITY COUNCIL OF CHARLESTON, DEFENDANT IN ERROR.

BRIEF OF W. D. PORTER AND JAMES CONNER, FOR PLAINTIFF IN ERROR.

The State of South Carolina has delegated to the City Council of Charleston the taxing power within the corporate limits, for municipal purposes. 1

This taxing power has been judicially declared to include bonds as taxable property.

State vs. City Council of Charleston, 1 Mills Con. Rep. 37.

In pursuance of this power, the City Council, by Ordinance, levied a tax of two per cent. on the assessed value of all real and personal property, and directed that "the taxes on City Stock be retained by the City Treasurer out of the interest thereon, when the same is due and payable," although all other taxes by the same Ordinance are made payable in three instalments, in April, June and September. *Trans. p. 7.* 2

The City Council deducted from the interest agreed to be paid, one-fourth of one per cent. on each quarterly instalment of interest on the stock held by him; against which deductions plaintiff in error protested, and duly entered his protest on each receipt for interest. *Trans. p. 6.*

Plaintiff in error was not at that time, and is not now, an inhabitant of Charleston, but an inhabitant of Bonn, Germany. *Trans. p. 7.*

3 If neither the person nor the property were within the corporate limits, there is no power to tax it.

The first question then is:

1. Is City Stock, or the stock of the corporation, taxable property within the city, where the holder of said stock is resident abroad?

There is an essential difference between the stock of a municipal corporation and that of a private corporation.

The latter is a certificate that the holder is entitled to a rateable share in the dividends and assets of the corporation.

4 The former is simply a certificate of indebtedness that the holder is entitled to the payment of a certain sum of money on a day certain, with interest at a specified rate, and at specified times.

Private stock is evidence of part ownership in associated capital.

Public stock is evidence of indebtedness on account of a contract of loan.

The former creates the relation of partnership.

The latter creates the relation of debtor and creditor.

5 What then the City Council has undertaken to tax is its own debt to a non-resident creditor; which debt is evidenced by a certificate of stock in the hands of that creditor, abroad.

Stock is personal property; and personal property, in the absence of any law to the contrary, follows the person of the owner, and has its *situs* at his domicil.

Tappan vs. Merchant's Nat. Bank, 19 Wall., 499.

This City Stock then has its *situs* at the domicil of the plaintiff in error, and not "within the limits of Charleston;" unless it be of that tangible, visible and corporeal character

6 which would give it a *situs* of its own.

For this purpose there should be shown some law which separates such property from the person of the owner, and thus gives it a *situs* of its own, with a view to taxation.

This was the case in relation to stock in the National Banks, the shares in which were made by Act of Congress subject to State taxation at the place where the banks were located respectively, and not elsewhere.

In the absence of such legislation the shares would not

have been taxable by any State, although the banks were located, and the stock was registered, and could be transferred only in such State. 7

In the "case of the State tax on foreign-held bonds," the principles are settled which must govern this case.

A bond of a railroad corporation, secured by real estate, savors much more strongly of locality than municipal bonds or stock.

The mortgage of part of the soil of the State is recorded in the State, and must be foreclosed within its jurisdiction; and yet this Court has held that the funded debt of a railroad company so secured, was a chose in action, followed the person of the owner, and was not taxable property where the owner was not resident. 8

Railroad Co. vs. Jackson, 7 Wall, 263.

Railroad Co. vs. Pennsylvania, 15 Wall, 300.

In contracts of loan by a State or city, bonds and stock are almost invariably made convertible. It is in the option of the lender which he will take. They are substantially the same thing: evidences of a right to a sum of money, and to the interest thereon, as agreed upon. In either case it is a contract of loan in which the State or city is borrower, and the holder lender. 9

If the plaintiff in error, instead of City Stock, held City Bonds, payable to bearer, could these bonds in Germany be said to be "taxable property within the city of Charleston?"

Certificates of Stock held in the same way are only the equivalents of bonds, and are as much choses in action as they.

A right or credit is not less a chose in action because it is due by a city or State; and municipal bonds or stocks are no less and no more than rights or credits in the hands of the holder. 10

A debt due by a corporation is not, in any sense, the property of the corporation. It is an obligation of the corporation, whether public or private, and only possesses value in the hands of the creditor. It has no locality apart from the person to whom it is due. And so far as it is held by non-residents of the city or State, it is property without the limits, and beyond the jurisdiction of the city or State.

It is not the stock, or certificate as such, that is taxable: that is only the evidence of the debt: it is the right to the
11 money that is taxable: the right to the money is the property, and that right must be, and can only be, where the owner is resident. It is taxable there, and cannot be taxed where it is not situated.

These principles are sustained in the following cases:

Railroad Co. vs. Jackson, 7 Wall., 266.
Tappan vs. Merchants Nat. Bank, 19 Wall., 499.
State Tax on Foreign Held Bonds, 15 Wall., 300.
Davenport vs. M. & M. R. R. Co., 12 Iowa, 539.
State vs. Ross, 3 Zabr., 317.
12 *Hunter vs. Board of Supervisors, 33 Iowa, 379.*
Collins vs. Miller, 43 Georg., 336.
Johnson vs. Oregon City, 3 Oregon, 13.
Johnson vs. City of Lexington, 15 B. Monroe, 648.

The judgment of this Court in the Railroad Co. vs. Pennsylvania would be conclusive in favor of the appeal in this case, and would preclude the necessity of all further argument, were it not that the Associate Justice, who delivered the opinion of the Court, used the following language, upon which the late Chief Justice of South Carolina strongly relies:

13 "It is undoubtedly true, that the actual *situs* of personal property which has a visible and tangible existence, and not the domicil of the owner, will in many cases determine the State in which it may be taxed. The same thing is true of public securities consisting of State bonds and bonds of municipal authorities, and circulating notes of banking institutions: the former, by general usage, have acquired the character of, and are treated as property in the place where they are found, though removed from the domicil of the owner, the bills are treated and pass as money, wherever
14 they may be."

It is manifest that these words do not convey the idea that public securities, such as State or City bonds, have a fixed *situs* in the place of their creation. It is not said that they are property in the place where *they are issued, but "in the place where they are found."*

And so of the circulating notes of banks, it is not said that

they are property in the place where the bank or banks are located, but "they are treated and pass as money *wherever they may be*."

The locality in which *they are*, or *may be found*, is the place 15
where they are to be treated as taxable property, as for example, where foreign insurance companies deposit State bonds or stock with a State officer as a security for policy-holders. In such case, the companies may be said, by thier own act, to give their bonds or stocks a *situs* for taxation.

The stock of plaintiff is not "found" any where within the limits of the State. The scrip is not separate from his person.

But what is it that constitutes the taxable element or ingredient in municipal stocks or bonds.

It is not the debt owing by the corporation, because as said 16
by the Court in "State tax on foreign held bonds," "it is not the property of the debtor in any sense."

15 Wall, 320.

It is not the money invested in the loan or stock, because in that case, money invested by non-residents in the stock of private corporation, would be taxable, which this Court, in the case last cited, has held it not to be.

It can only be the right to the sum of money, with regularly accruing interest, which is as much and as completely "in the hands of the holder," in the case of public as of 17
private stock or bonds.

A resident of New York, holding in New York stock or bonds of the city of Charleston, would on well settled principles of law, be taxed as to them, as part of his personal property in that jurisdiction, and to tax them in South Carolina also, would not only be a violation of that comity which States owe to each other, but would inflict upon the holder the oppression and injustice of double taxation.

The registration of stock and transferring on the books of a public corporation, is a provision for the convenience and 18
security of the debtor; and private corporations have, in like manner, their regulations for registration and transfer. This, therefore, cannot be held to give stock a *situs* for taxation any more in the one case than in the other.

If then it be settled that the bonds and stocks of private

corporations, in the hands of non-residents, are non-taxable, what is the distinctive quality or characteristic of public stock that renders it subject to taxation?

It is a case of contract of loan, of pure indebtedness, even
19 more so than the case of stock in a private corporation, for the latter involves the idea of carrying on trade or business within this jurisdiction, under particular and special partnership.

And the certificate or scrip is the evidence of the loan and indebtedness, and of the promise to repay it with interest.

Where the evidence or instrument of indebtedness is not separated from the possession of the owner, where, in other words, it has no actual or tangible *situs* within the locality, it can only be regarded as a debt, a chose in action, which re-
20 sides with the owner and follows his domicil.

If these views be sound, plaintiff's stock is not "taxable property within the city."

The locality of chattels in relation to alienation and transfer, is a different thing from its locality as to taxation. In *Robinson & Bland*, 2 *Burr.*, 279, Lord Mansfield, referring to public funds or stocks, says, that *contracts* in relation to them should be carried into execution according to the local law. That is because when a public stock is created, there are always regulations prescribing the manner and form in
21 which it shall be transferred, and these regulations are conditions upon which the stock is taken. Especially was this the case in England, where the public funds are strictly hedged round with rules as to transfers; and where, certainly in the days of Lord Mansfield, public securities were not of so negotiable and migratory a character as the exigencies of modern commerce have made them.

The distinction is this: as to public securities, their alienation or transfer, *inter vivos*, must be according to the forms prescribed by the laws of the country where the stock is cre-
22 ated; but as to the testamentary disposition, or succession and distribution in case of intestacy, and as to the liability to the legacy duty or tax, the law of the domicile governs.

Mr. Burge, in his Comm. on Col. and For. law, pt. 2, Ch. 20, pp. 751–752, explains this distinction with great clearness,

and shows that it is only to "a limited extent," to wit, as to transfers *inter vivos*, that the *lex loci* prevails instead of the *lex domicilii*, and this only as to mode and manner of transfer. And that although the contract may fail for want of compliance with prescribed forms, to confer a title on the purchaser, it will give him a right to compel the seller to 23
make a transfer in the manner prescribed by the local law.

It is a mistake to suppose that in the English Courts any other rule is established than that personal property, including public stocks, follows the domicile of the owner.

In *Bruce vs. Bruce*, a House of Lords case, reported in a note to *Marsh vs. Hutchinson*, 2 *Bos. & Pull.*, 229, it was held that debts owing to a British born subject, who died domiciled in India, were not liable to legacy duty, although the property was in England, the executors were in England, the legatees in England, and the administration of the property 24
in England. The Lord Chancellor, Thurlow, said: "The property consisted of debts owing to the deceased, or money in bills of exchange drawn on the India Company. Debts have no *situs*; they follow the person of the creditor."

In re Bruce, 2 *Cromp. & Jerv. (Exchq. R.)*, 445, the testator was domiciled in America; at the time of his death he had standing in his name in the British funds £1,111 in three per cent. Consols, £500 in reduced annuities, and £52 in long annuities. The will was proved in England; there were English executors and English legatees, and the question 25
was whether this property was liable to legacy duty. Bayley, Baron, said: "Upon consideration we are all of opinion that the legacy duty is not payable."

He says further: "His (testator's) personalty, wherever situated, was to be deemed not British, but American property, and neither himself, nor his property there, liable generally to be bound by British Statutes, or to contribute to the support of the British Government."

And again, "the Acts of our Parliament were not binding upon him, and he had a right to transmit the property which 26
he had here to whom he would, free from every British burden."

This was a case of Government stocks.

In the matter of the estate of Ewin, *1 Cromp. & Jer. p. 150*, testator was domiciled in England, and "died possessed of considerable property in American, Austrian, French and Russian funds, which were transferable, and the dividends payable in those countries respectively."

The question was whether these foreign government stocks
27 of a person dying domiciled in England were liable to the legacy duty in England.

Brougham and Lynch contended that these stocks were in the nature of real property, and that they were payable and transferable only in the countries in which the funds were.

The Attorney-General and Amos contra, urged that this was personal property, and was to be distributed according to the *lex domicilii*, and was therefore liable to legacy duty.

Bayley B., in his opinion, states, that property in the English funds "might in their creation be considered as being
28 real property and descendible to the heir, but which, very soon afterwards was considered to be personal property, and not descendible to the heir, but to go as personal property would go."

He then proceeds: "If it is not real estate, it is personal estate; and if it is personal estate, is it in any respect to be considered different from personal property abiding in this country? There is no doubt but that the amount when you are receiving the dividends will be payable in the place in which by the constitution of those funds, the dividends are payable,
29 and that will be America, Paris or Petersburg. But you are not to look at the place where the thing is payable or transferable, but when, once you have ascertained that it is personal estate, then you are to ascertain what are the rules of law with regard to personal estate, that personal estate being at the time not in this Kingdom, but being at the time locally situated abroad."

He then lays down the general rule in these words: "personal property follows the person, and it is not in any respect to be regulated by the *situs*; and if in any instances the *situs*
30 has been adopted as the rule by which the property is to be governed, and the *lex loci rei sitæ* resorted to, it has been improperly done. Wherever the domicile of the proprietor is, there the property is to be considered as situate."

He adds, "the present is the case of a man having an English domicile, all whose property of this description is considered English personal property."

And these foreign government stocks were held to be liable to legacy duty, because the domicile of the owner was in England.

1 Cromp and Jer., (Exchcq. R.) 150. 31

The principle of this decision was confirmed and established by the judgment of the House of Lords in Thompson *vs.* the Advocate-General, 12 Clark and Finnelly, 1.

John Grant, a British born subject, was domiciled in Demarara. The question was whether his personal property in Scotland was liable to the legacy duty.

Lord Ch. J. Tindall delivered the unanimous opinion of the judges, that such legacies were not liable to the legacy duty.

In discussing the cases he says: "And again, in the case of Arnold & Arnold, where the testator, a natural born English- 32
mon, but domiciled in India, died there, it was held by Lord Chancellor Cottenham, that the legacy duty was not payable upon the legacies under his will, his Lordship adding: "It is fortunate that this question, which has been so long afloat, is now finally settled by an authoritative decision of the House of Lords."

The generality of the legacy act was commented on, the words being "for every legacy, specific or pecuniary, or of any other description, of the amount of £20 or upwards, given by any will or testamentary instrument of any person 33
out of his personal or movable estate," etc.

Lord Brougham, who in the case of estate of Ewin had contended that stocks were local and in the nature of real property, in the course of his remarks observed, that there has been conflict in the decided cases, but that it was now settled that wherever the personal property might be locally situated, "it is perfectly clear that no difference can be made in consequence of that, because the principle *mobilia sequuntur personam*, as regards their distribution, and their coming or not within the scope of the Revenue Act, must be taken to apply 34
to two cases precisely similar; and the rule of law, indeed, is quite general that in such cases the domicile governs the per-

sonal property, not the real; but the personal property is in contemplation of the law, whatever may be the fact, supposed to be within the domicile of the testator or intestate." *P. 26.*

Lord Campbell, in delivering his opinion in the case, said: "The truth is, my Lords, that the doctrine of domicile has sprung up in this country very recently, and that neither the Legislature nor the Judges, until within a few years, thought
35 much of it; but it is a very convenient doctrine, it is now well understood, and I think that it solves the difficulty with which this case was surrounded."

Referring to the cases of *Attorney-General vs. Cockerell*, and *Attorney-General vs. Beatson*, he says: "If it (the doctrine of domicile) had been the criterion at that time, there would have been no difficulty at all in determining this question; but now, my Lords, when we do understand this doctrine better than it was understood formerly, I think that it gives a clue which will help us to a right solution of this
36 question. *12 Clark and Finelly, 28.*

It is clear from these cases, and others cited in them, that at one time there prevailed an idea that the public stocks were real property or in the nature of realty, that this idea led to a conflict of decisions and confusion of principles; that this idea was then abandoned and the doctrine established that public stocks were like all other debts; that they had no *situs* of their own, and being a part of the personal property, must follow the law applicable to personal property and distinguishing it from real property; that the uniform rule of
37 personal property is that it follows the domicile of the owner, and that the uniform application of this rule is the only clue for the solution of questions touching moveables.

The case *in re Hein* is that of a British subject owning foreign government stocks, and the case *in re Bruce* is that of an American citizen owning British Government stocks or funds. The one case is the converse of the other. But in both the test applied to the liability to legacy duty is that of the domicile; and it is to be remarked that in neither case is there a word, in the opinions of the Judges, about any dis-
38 tinction, in this respect, between the government funds or stocks, and other personal property. And in the latter case

it was distinctly affirmed that as testator was an American resident, neither he nor his personal property, consisting of consols and other government securities, were liable to the statutes of the British realm; that the Acts of the British Parliament were not binding upon him, and that he had a right to transmit the personal property he had in the British funds, to whom he would, "free from every British burden."

The Chancery Courts have adopted the same principle.

Pemple vs. Johnson, 3 Ves. Jr., 200 and notes. 39
Sommerville vs. Sommerville, 5 Ves. Jr. 750 and notes.
Thorpe vs. Watkins, 2 Ves. 35.

In this last case, Lord Hardwicke observes, that if the disposition was to depend upon the locality, it would have the mischievous consequence of deterring foreigners from dealing in the English funds.

The same doctrine is firmly established in America.

Story's Conflict of Laws, Sec. 468.
Holmes vs. Remsen, 4 John's Ch. R., 470.
Desesbats vs. Berquier, 1 Binney R., 336. 40
2 Parsons on Con., 571, and n.

It appears clear, then, not only that personal property, and particularly choses in action, including public stocks and government funds, have no locality or *situs* of their own; but that if the owner be a foreigner, they are considered as foreign property, and are withdrawn from the legislation and the burdens of the country where they may happen to be.

On this principle, and the authorities cited, it is respectfully submitted, that the City Stock in this case was not "*taxable property* within the limits of Charleston." 41

2. The plaintiff in error is a non-resident, and does not conduct any faculty, profession or occupation within the city. If the tax sought to be levied upon appellant is a tax on "income or profit," the city has no authority to levy it, for a man's income is strictly attached to his person, and is taxable only where he resides.

This is substantially a tax on income or profit.

The tax is 2 per cent. on the assessed value of property, and "the tax on City Stock shall be retained by the City Treasurer out of the interest thereon, when the same is due and payable." *Transcript, p. 7.* 42

In other words, one-quarter of 1 per cent. upon each quarterly instalment of interest is withheld or taken by the city under the guise of a tax.

This interest is the "income or profit," upon appellant's loan to the city, and that "income or profit" is regularly and specifically reduced to the extent of one quarter of 1 per cent. by this tax. But as he is not an inhabitant of the city and does not carry on any occupation, faculty or profession there-
43 in, the City Council have no right to levy an income tax upon him by periodically withholding a portion of the interest which they stipulated to pay upon his loan.

3. The tax of the City Council upon City Stock is a tax upon the contract of loan, and impairs the obligation of that contract.

This principle is settled by this Court in *Weston vs. City Council of Charleston, 2 Peters, 468.*

The contract is to pay a certain rate of interest on the loan; and to withhold any part of it, under whatever guise or pre-
44 text, is a violation of the contract. The transaction is one of borrowing and lending, and that relation subsists until the debt is paid. Nor is there any tacit reservation of a right to tax, or rather of a right to lower the rate of interest by taxation; this would involve two contradictory things, viz: the obligation to pay a certain amount, and the right to withhold part of it. An express promise cannot be overruled or defeated by a tacit reservation. To make clear the position that this tax is a *tax on the contract*, we will apply to it the very language of Ch. J. Marshall in *Weston and the City*
45 *Council*, substituting only the City Council and the City of Charleston, for Congress and the United States.

"Congress (the City Council) has power to borrow money on the credit of the United States (the city of Charleston.) The stock it issues is the evidence of a debt created by the exercise of this power. The tax in question is a tax upon the contract subsisting between the government and the individual. It bears directly upon that contract while subsisting and in full force. The power operates upon that contract the instant it is framed, and must imply a right to affect that
46 contract." *2 Peters, 465.*

Nor is it any answer to say that City Stock is in the same situation as land or other property sold by the City Council, and that there is the same right to tax the one as the other. The difference is manifest. When land is sold the connexion between seller and purchaser is dissolved. The land becomes a part of the common mass of property and is subject to the same burdens, unless there be some special exemption. The land is in the condition of money borrowed and repaid. But City Stock is the evidence of a subsisting contract of loan, and of an agreement to pay a specified amount of interest. 47
As long as that contract subsists, any tax which reduces the amount of interest is a tax upon the contract, and impairs its obligation in the Constitutional sense. It is the nature of the relation and the agreement that brings about this result. The relation is that of borrower and lender; the agreement is to do a specific thing. As long as the relation exists, the thing must be done as agreed upon. To alter or impair it there must be an express reservation of power. The Court will not raise or sanction an implication that is repugnant to an express promise. 48

In the case of *Weston and the City Council*, this question was concerning the validity of a tax levied by this same City Council of Charleston upon stock of the United States. Ch. J. Marshall says, "that is a tax upon the contract subsisting between the government and the individual," that is to say, between the Government of the United States and the holder of its stock. And precisely so in this case, we say that the tax imposed is a tax upon the contract between the city of Charleston and the appellant, a foreign holder of its monetary obligation. In other words, the City Council, whose power 49
of taxation is derivative, claims and exercises the power to lay a tax upon its own written contract of loan with its creditor, who is not subject to its jurisdiction, nor amenable to its laws.

The fact that it is dealing with its own contract does not alter the case, except to make it more conspicuously unjust and iniquitous. The principle is the same, but the instance is more repugnant. The certificate held by the appellant certifies that "there is due from the City Council of Charles-

ton" unto Wm. C. Murray a certain sum of money, payable at a certain time, with interest at the rate of six per cent. per annum, payable quarterly. This is the contract; the parties to it are the City Council and Wm. C. Murray. There is a right on the part of Murray to receive the sum and the interest stipulated, and there is a duty on the part of the Council to pay the same according to the terms of the agreement. As long as that contract subsists and is of force, one party cannot change it without the consent of the other; and any action on the part of the Council which changes its terms, or diminishes its value, impairs the obligation of the contract, and violates the Constitutions of the State and of the United States. When the contract is at an end; when the money, whether of principal or interest, is paid, and is put into some new shape or investment in the community, it is then, of course, like other property, subject to taxation. But, until then, any subtraction from the principal or interest by one of the contracting parties, in the shape of tax or in whatever shape, is a direct impairing of the contract, lessens its value, and, in fact, substitutes a new contract for the old one.

This part of the argument rests on two grounds: one is, that an express promise cannot be met and contravened by a tacit reservation repugnant to it; and the other is, that where a contract of loan is still subsisting, a tax which touches the principal or interest of the debt is a tax on the contract.

The fact that the United States government has taxed or may tax its own stock does not affect the question.

That Government is not bound by the Constitutional inhibition. It is bound in this respect only by moral considerations; and one Congress may take a very different view of what is moral or immoral from another.

But the State and the municipal corporation which derives authority from it are under fundamental legal restraints, and can not impair the obligation of a contract.

The argument of Alex. Hamilton, in his report on the Public Credit, in 1795, (*3 Ham's Works, 514*) is complete and exhaustive.

He says: "It is in theory impossible to reconcile the two ideas of a promise which obliges, with a power to make a law which can vary the effect of it."

In *Jellison vs. Lee*, (*3 Woodbury & Minot, 376.*) Woodbury, J., treats the question of a government taxing its own stock as settled by Hamilton's argument, an I says, that an attempted deduction from the amount the debtor promises to pay, whether it be in the form of a tax or a commission, amounts to a virtual violation of the promise to pay that precise sum. 54

Our points then may be summed up as follows:

I. 1. The City Council has jurisdiction and can exercise the taxing power over such persons and property only as are within the limits of the city. 55

2. The appellant is a foreign resident, and his personal property has the same domicile as himself.

3. City Stock is a chose in action; and coupon bonds, registered bonds and registered stock are all alike evidences of debt, and are in contemplation of law, in the possession of the owner, wherever he may reside.

4. Public securities have no more locality than private securities, whether individual or corporate; and the idea that they had has long since been abandoned by the Courts where it originated. 56

5. If these positions be sound, then neither the appellant nor his property were subject to taxation by the City Council.

II. 1. The tax is substantially a tax on income, as it is retained out of the interest at times and in a manner different from other taxes; and inasmuch as the appellant neither resides in the city nor pursues any faculty, business or occupation within the city, his income is not taxable by the City Council.

III. 1. The tax is a tax upon a subsisting contract, and by reducing the amount of interest paid, alters and impairs that contract, and so violates the Constitution of the State and of the United States. 57

2. The relation of borrower and lender, of debtor and creditor implies right on one side and corresponding obligation on the other; the right to demand a specific sum and the obligation to pay it.

3. Where a party takes upon himself a duty or charge by express contract, no implication or tacit reservation will be

allowed to contravene it, and this principle applies to municipal corporations as well as to individuals.

58 The withholding, under any pretext, of any part of the principal or interest agreed to be paid, violates the obligation of the contract.

The substance of the argument is tersely and forcibly put by Associate Justice (now Chief Justice) Willard, in his able dissenting opinion.

"The question then resolves itself into this: whether the City can impose upon the non-resident holder of its obligation any part of the duty of supporting the municipal govern-
59 ment. It is clearly against reason and justice. It is a case of a debtor claiming support from his creditor while acquiring the means of paying his debts. A principle so clearly wrong needs no elucidation, nor need it be encumbered with laborious considerations of the legal idea of the status of property. It is simply an abuse of the taxing power, recognizable at once by the application of the commonest rules of right dealing that are open as well to the common sense of the community at large as to those fettered by legal learning."

Supreme Court of the United States.

W. C. MURRAY
vs.
CITY OF CHARLESTON. } *No. 95.*

THOS. JENKINS
vs.
SAME. } *No. 237.*

BRIEF ON RE-ARGUMENT.

P. PHILLIPS,
JAS. B. CAMPBELL,
for Defendant in error.

January 10, 1878.

R. O. POLKINHORN, PRINTER, Washington, D. C.

Supreme Court of the United States.

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Brief of P. PHILLIPS,

On re-argument for Defendand in Error.

In 1783 the State of South Carolina incorporated the city of Charleston. Among other powers conferred upon it, was the authority to "make such assessments on the inhabitants of Charleston, or those who hold taxable property within the same, for the safety, convenience, benefit, and advantage of the city as shall appear to them expedient."

Under this power the city passed an ordinance "to raise supplies for the fiscal year ending December 31, 1870." Sec. 1 directed the City Appraiser to assess a tax of two cents upon the dollar of the value of all real and personal property in the city for the purpose of meeting the expenses of the city government for the current fiscal year.

Sec. 3 directed that the taxes assessed on city stock shall be retained by the City Treasurer out of the interest thereon, when the same is due and payable.

A similar ordinance was passed for the fiscal year ending December 31, 1871.

The plaintiffs in error, as holders of the city stock, brought suit in the Court of Common Pleas for the State of South Carolina to recover from the city the amount of the tax retained out of the interest due to them, alledging that the said tax "*was illegal.*"

The answer of the city was, that the stock was duly assessed in pursuance to the ordinance, and that the stock is not expressly exempted from taxation by the ordinance under which it was issued.

The case being submitted to the determination of the court, it was held that—

First. The city had the right to tax the stock as it was neither exempted by a law of the State or by the ordinance, from taxation.

Second. That the city had the right to collect the tax by retaining it out of the interest due thereon.

These judgments, together with three others involving the same question, were taken to the Supreme Court, where they were all affirmed, the court delivering one opinion covering all the cases.

The present appellants were non-residents of the State, but elected to sue in the State Court, and we call attention to the fact, that in their complaint they in no wise raise a Federal question, but merely allege that the tax was illegal. The court decided that it was legal.

Jurisdiction.

As already stated, no Federal question was raised or decided in the Court of Common Pleas.

After the Court had rendered its judgment on the only issue tendered by the plaintiffs below, a notice of appeal was served on the city, on the grounds:

1. That the plaintiff, being a non-resident, is not liable to the tax.

2. That the laws of the State do not authorize the levy and retention of a tax upon its own stock.

3. That such a tax is a violation of good faith in the contract of loan, and impairs the obligation of said contract, and is, therefore, unconstitutional and void.

The notice of appeal is certified as a part of the transcript in the Court of Common Pleas. The record does not exhibit any assignment of errors in the Supreme Court.

The third ground of appeal does not aver whether the unconstitutionality of the tax was rested upon the State or Federal Constitution.

But if we were to admit that the Federal Constitution was invoked as a protection, and that this notice is to be considered as an assignment of error in the Supreme Court, it is then to be considered how far the new matter thus introduced into the Appellate Court affects the judgment of that Court, or the revisory jurisdiction of this.

When the Supreme Court of the State is asked to reverse the judgment of a subordinate court, the demandant must show error, and this can only be done on matters submitted for its consideration, and not on any new matter or question presented for the first time in the Appellate Court.

And to enable a party to ask a reversal, in this Court, of the judgment of the Supreme Court of the State, it is not sufficient to show that a Federal question was introduced into the record by an assignment of error for the first time made in that Court.

This was fully considered in the case of Lessor, of

Fisher vs. *Cockerell*, 5 Pet., 252, in which the suit was dismissed for want of jurisdiction.

Marshal, C. J., thus states it:

"When the record of the Union Circuit Court was transferred to the 'Court of Appeals,' the course of that Court requires the appellant to assign errors. This assignment contains the first intimation that the title was derived from Virginia, and that the plaintiff relied on the compact between the two States."

"But this assignment *does not introduce error into the record, or in any manner alter it.* The Court of Appeals was not confined to the inquiry whether the error assigned was valid in point of law. The preliminary inquiry was whether it existed in the record. If, upon examining it, the Court could not discover that the plaintiff had asserted any right in land derived from the laws of Virginia, the question whether the occupying claimants have violated the compact between the States, COULD NOT ARISE."

We have here, for the first time, a distinct assignment of error in the following terms:

"The court erred in holding that the laws of South Carolina authorizing the taxation of the stock of the plaintiff, who was a non-resident of South Carolina, did not impair the obligation of a contract, and were not in violation of the 10th section, 1st article of the Constitution of the United States."

We are now dealing with the case of Jenkins, No. 95.

In Murray's case, No. 237, the Court will notice *that there is no assignment of error.*

It will be seen that the assignment admits that the laws of the State authorized the taxation of the stock.

And in the Brief, p. 2, it is admitted that the decision

of the State court to this effect, is a judgment that "cannot be revised here."

The language of the court below is that "this right of taxation existed at the time of the contract, and so entered into it as to become one of its necessary elements and attributes. The obligation of the contract is not impaired by the imposition of the tax, because it was a property which attached to the contract."

The law thus referred to was the charter of 1783, and the ordinance of 1871 was sustained as the proper exercise of the authority conferred by the a·

If then we are to test the case by the
it cannot be maintained that contracts
subordination to its terms are violated by its provisions so as to raise a Federal question.

In *Railroad Co.* vs. *McLure*, 10 Wall., 515, on writ of error to the Supreme Court of Iowa, in which it was held that the bonds were invalid under the law existing at the time of their issue, this court dismissed the writ, holding that such a decision did not present a Federal question under the 25th section.

Again, the act of 1783 was not only in force prior to the existence of the contract, but was also prior to the adoption of the Federal Constitution.

Such a law has been twice declared by this court not to be subject to the provision against impairing the obligation of a contract.

Owens vs. *Speed*, 5 Wheat., 420.

League vs. *De Young*, 11 How., 203.

The jurisdictional question is to be determined by showing the existence of a *law* impairing the obligation. It cannot be invoked by a *decision* producing that effect.

In *Railroad Co.* vs. *Rich*, 4 Wall., 181, MILLER J., says:

"The argument goes upon the fundamental error that this court can, as an appellate tribunal, reverse the decision of a State court because that court may hold a contract to be void, which this court might hold to be valid. If this were the law, every case of a contract held by the State court not to be binding, for any cause whatever, can be brought to this court for review, and we should thus become the final resort in all cases of contract where the decisions of the State courts were against the validity of the contracts set up in those courts."

See, also, *Knox* vs. *Exchange Bank*, 12 Wall., 582.

Nor can the jurisdiction be invoked by showing that the law is unjust or oppressive. This forms no ground for the revision of the judgment of the State court.

The power to tax, say the Court, may be abused; but the Constitution of the United States was not intended to furnish the correction of every abuse of power which may be committed by the State governments.

Providence Bank vs. *Billings*, 4 *Pet.*, 563.

This court can only enforce those limitations which the Constitution imposes, and not those implied restrictions which, resting in theory only, the people have been satisfied to leave to the judgment and sense of justice of their representatives.

Courts have no power to revise legislative action. Their function is to enforce the legislative will. It is only where they find that the Legislature has failed to keep within its constitutional limits, that they are at liberty to disregard its action. "In exercising this high authority, the judges claim no judicial supremacy; they are only the administrators of the public will. If an act of the Legislature is held void, it is not because the judges have any control over the legislative power, but because the act is forbidden by the Constitution, and be-

cause the will of the people, which is therein declared, is paramount to that of their representatives expressed in any law."

Under our system of government, power is carefully divided between the executive, legislative, and judicial departments. Each has its appropriate and exclusive duties. The judiciary cannot run a race of opinions upon points of right, reason, or expediency, with the law-making power.

If the Judiciary should set aside an act of Congress or an act of the State upon any other ground than its unconstitutionality, it would be, in our judgment, a usurpation as gross, as though the Executive had, with mailed hand, obstructed the judgment of a court or an act of the Legislature.

These views are in accordance with the opinion of this court as expressed in *Mills* vs. *St. Clair*, 8 How., 585, where it is said: "When" private property is taken, not for public use, but to be loaned out to private occupants, it is an abuse too plain for reasoning, to make it more so. Such an act is a mere evasion, under pretence of exercising the right of eminent domain. But this abuse under the sanction of a State law, gives no jurisdiction to this Court to redress the wrong. It rests with State regulations and State courts to protect their citizens from injustice and oppression of this description.

So in *Satterlee* vs. *Matthewson*, it is said. "The objection relied on is, that the effect of the act was to divest vested rights. But there is no part of the Constitution of the United States which applies to a State law of this description, provided its effect be not to impair the obligation of a contract." (2. Pet. 413.)

We have thus extended this discussion, because the plaintiff in error relies upon some general expressions of Mr. Justice MILLER in the case of *Loan Association* vs.

Topeka, (20 Wall, 658) which are supposed to conflict with the principles which we insist upon.

It is not to be overlooked that this case was not here under the 25th section, and, therefore, did not involve the authority of this Court to declare an act unconstitutional, which the Supreme Court of the State had held to be valid, as it is now asked of the Court to do.

Strong as some of his expressions are, as to the limitations which grow out of the essential nature of all free governments, we say of them, as is said by Mr. Cooley, that though in some reported cases a doctrine is understood to be intimated different from that which is now contended for—"It will generally be found on examination of these cases, that what is said is rather by way of argument and illustration, to show the unreasonableness of putting upon constitutions such a construction as would permit legislation of the objectionable character then in question, and to induce a more cautious and patient examination of the statute, with a view to discover in it if possible, some more just and reasonable legislative intent, than as laying down a rule by which courts would be at liberty to limit according to their own judgment and sense of justice, the extent of the legislative power in directions in which the constitution had imposed no restraint. (Cooley, Con. Lim. 164.)

We may also add that as the jurisdiction is invoked upon the single assignment of error, all that the court can enquire into is, do the "laws of South Carolina" impair the obligation of the contract? If they do not, it is wholly immaterial how unjust the court may consider the tax to be.

The brief of plaintiff in error concludes with the proposition that the ordinance cannot be sustained "*as an exercise of the taxing power.*"

Whether it is so or not so, will afford no jurisdiction

here, without that power (be it what it may), impairs the obligation of the contract.

But on what ground is this court called on to affirm the proposition?

We have before us a law taxing all personal property within the city, including the stock.

The Supreme Court holds that the act of 1783 authorized the tax, as the interests due to the stockholders in the hands of the Treasurer constitute *personal property within the city.*

In the presence of these facts the court is asked to say that this is not the *exercise of the taxing power*, but an evasion for the purposes of confiscation and spoliation.

We answer with the tongue of this court, in *West River Bridge* vs. *Dix*, 6 How., 536: "It is insisted that this was a pretended exercise of the power of eminent domain, with the view of destroying the force and obligation of the plaintiff's charter. This whole proceeding was under a standing law of the State, and it was sustained on appeal, by the Supreme Court of the State. A proceeding thus authorized by law, and thus sanctioned, can not be lightly regarded. *It has all the solemnities of a sovereign act.*"

The same objection was urged in *Vezie Bank* vs. *Fenno*, 8 Wall., 548, where it was insisted that the tax of 10 per cent. on the issue of State bank currency was so excessive as to indicate the purpose of destroying the franchise of the banks, and was, therefore, unconstitutional.

The answer of the Court is "that the judicial cannot prescribe to the legislative department limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. So

that if a particular tax bears heavily, it cannot, for that reason only, be pronounced contrary to the constitution."

Our conclusion then, is, that the decision of the Court, holding that the interest due the stockholders was personal property, does not present a federal question, and is, therefore, conclusive on this Court.

In this view we deem it unnecessary, to discuss the the cases in which the *situs* of such property is held to differ from that of the domicil of the owner.

In *Green* vs. *Vanbuskirk*, 7 Wall., 150, the Court say: "It is a vexed question on which learned courts have differed; but, after all, there is no absolute right to have such transfer respected, and it is only on a principle of comity that it is ever allowed. This principle of comity always yields when the laws and policy of the State where the property is located have prescribed a different rule of transfer with that of the State where the owner lives."

And so in *Catlin* vs. *Hull*, 21 Vermont, it is said: "We do not consider the doctrine in relation to the *situs* of personal chattels, and relating to its transfer and distribution, as at all conflicting with the actual jurisdiction of the State where it is situated over it, or with their right to subject it, in common with other property of the State, to share the burden of the government by taxation."

In this case *debts due to non-residents* were taxed and the Court say: "We are fully satisfied, that by all the well settled principles relating to the power of sovereign States, they have the power to tax all persons or property within their jurisdiction; and such has been the settled practice in this State, not only in reference to property tangible, but also that which is incorporeal, such as shares in Manufacturing and Banking Associations."

In the case of People vs. Home Insurance Company—29 Cal., 534—where the bonds due to a New York Corporation were taxed by the city of San Francisco, the court said: "It is claimed that these bonds are mere evidence of debt having no intrinsic value; that they are mere representatives of a debt owned in New York; that they have no *situs* apart from the domicil of the owner, and therefore do not constitute *property within the State*. But this is a fiction of law adopted for the purpose of contracts and descents. It may still, for the purpose of taxation and judicial proceedings, be affected by the law of the place where it is in fact situate."

Hence it is that whenever personal property is taken by arrest, attachment or execution within a State, the title so acquired, under the laws of the State, is held valid in every other State, and the same rule is applied to debts due to non-residents which are subjected to the like process under the local laws of a State."

So Chief Justice Tilghman holds: "In one sense, personal property has locality; that is to say, if *tangible*, it has a place in which it is situated, and if invisible, (*consisting of debts*), it may be said *to be in the place where the debtor resides;* and of these circumstances the most liberal nations have taken advantage by making such property subject to regulations which suit their own convenience."

Cited in Story's Conflict of Laws, § 383.

It will be noticed that the assignment of error is peculiar in this respect. The invalidity of the act as impairing the obligation of the contract, is rested merely upon the non-residence of the owner.

The ordinance makes no distinction between residents

and non-residents; and no distinction is made by the judgment of the court.

If the tax be valid as against the citizen stockholder, it is incumbent on the plaintiff in error to show how it can be declared invalid as to the non-resident stockholder.

It is also necessary for him to show that the application of the tax to such non-residents affords to this court the right to reverse the judgment of the State court by reason only of his non-residence.

This is attempted by reference to the case of State tax on foreign-held Bonds, 15 Wall.

By act of Pennsylvania in 1868, it was required of its corporations to retain 5 per cent. of the interest due on its bonds as a tax to the State. The tax was resisted on behalf of the non-resident owners. The Supreme Court of the State sustained the tax, and this judgment was reversed here on the ground that, as to non-residents, the act was void, as impairing the obligation of the contract.

It appears from the note of the reporter, that two other cases were then under consideration, coming from the same court, and his usual care is exhibited in calling attention to the fact that these two cases differed from the first in this, that while in the first, the act was passed subsequently, in the last two, it was passed prior to the issue of the bonds. The note then goes on to state that these two cases were disposed of, the Court holding "that these cases involved the same questions that had been considered and decided in the previous case, and that the difference in the mode of assessing the tax did not affect the principle decided."

Was this distinction accidentally overlooked, or was the difference of dates considered to be immaterial? We were inclined to the former supposition for the reason that the Justice delivering this judgment had concurred in the opinion of SWAYNE, Justice, in *Railroad*

Company vs. *McLure*, where it was held that the court had no jurisdiction when the decision had passed upon a statute in existence when the contract was entered into.

Still, this view is scarcely reconcileable with the dissenting opinion of DAVIS, Justice, in the last two cases, who expressly refers to *this distinction*. In this dissent, he says:

"As the highest court of the State has decided that the act of 1844 authorized the imposition of the tax, and as *that act was in force when the bonds were issued*, I cannot see how any principle of the Federal Constitution is violated, nor can I see how this Court can reach the conclusion it does in these cases without denying to the State government the right to construe its own local laws."

Again, he says:

"I am also of the opinion that a State Legislature is not restrained by anything in the Federal Constitution, nor by any principle which this court can enforce against the State court from taxing the property of persons, which it can reach and lay its hands on, whether these persons reside within or without the State."

In this opinion Justices CLIFFORD, MILLER and HUNT concurred.

The dissenting opinion refers to the case of *Railroad Co.* vs. *Jackson*, (7 Wall., 266,) where the same act now involved in these two last cases (to wit, the act of 1844,) was under discussion.

This case was brought up from the Circuit Court for the State of Maryland, to review the judgment which held that this act of 1844 of Pennsylvania, taxing dividends was not operative against a foreign bond-holder.

NELSON J., delivering the opinion of the majority, placed the affirmance of this judgement solely on the

ground that the tax was attempted to be enforced on the line of road lying in Maryland. That this line was controlled by a new corporation created by the latter State, and that the bonds in question had been issued by it.

What, we ask, would have been the decision, if the case had come from the Circuit Court of Pennsylvania, and the tax had been assessed on the interest due on bonds issued by one of its own corporations on a line of road within its own limits?

Let Justice NELSON answer:

"It has been argued by the plaintiff that the act of Pennsylvania, when properly interpreted, does not embrace the bonds or coupons in question. But it is not important to examine the subject, for it is not to be denied, as the courts of that State have expounded the law it does authorize the deduction. And if no other objection existed against the tax, *the defense would fail.*"

SWAYNE J. united with CLIFFORD J., holding that the tax was legally assessed and properly deducted.

Referring again to the case from 15 Wall., it will be seen that the jurisdiction of the court is based upon the extra-territorial effect of the act.

Justice FIELD, who delivered the opinion, states it thus:

"That the extra-territorial invasion of State laws, discharging a debtor from his contracts with citizens of other States, even though made and payable in the State, after the passage of such laws, has been judicially determined by the court. A like invalidly must, on similar grounds, attend State legislation which seeks to change the obligation of such contracts in any particular, and on stronger grounds when the contracts are made and payable out of the State."

We do not deny the jurisdiction where the act "seeks

to change the obligation of the contract." When such is the case, there is an end of the question.

What we do deny is, that the court can exercise jurisdiction upon the mere ground that an act of the State has an extra-territorial effect, and this, we presume, was intended to be decided, as the court refers to the case of *Ogden* v. *Saunders*, 12 Wheat., upon the effect of State in solvent laws on non-residents.

We submit that such a ground of jurisdiction finds no support in any provision of the Constitution, or in any act of Congress, regulating the appellate power of this Court. *Ogden* v. *Saunders*, was followed by *Bogle* v. *Zacharie*, 6 Pet. 348; *Cook* vs. *Moffitt*, 5 How. 311, and *Baldwin* vs. *Hale*, 1 Wall. 321.

No one of them was under the 25th section of the judiciary act authorizing a review of the judgment of a State court.

It is very true they undertook to pass on the constitutionality of a State law.

Where, it may be asked, did the Court find jurisdiction? In *Ogden* vs. *Saunders*, the source of the doctrine, JOHNSON, J., states it thus:

"My opinion is briefly this, that the provision of the Constitution which gives the power to the General Government *to establish tribunals of its own in every State*, had for its object an harmonious distribution of justice throughout the Union; to confine the States to the exercise of their judicial sovereignty to cases between their own citizens; to prevent, in fact, the exercise of that very power over the rights of citizens of other States, which the origin of the contract might be supposed to give to each State."

And this opinion concludes with the proposition: "When in the exercise of the power, the States pass beyond their own lines, and the rights of their own citizens, and act upon the rights of citizens of other States, there

arises a conflict of sovereign power, and a collision with the judicial powers granted to the United States, which renders the exercise of such a power incompatible with the rights of other States, and with the Constitution of the United States.

Here jurisdiction to set aside a State law, is derived from the power of the general government "to establish tribunals of its own in every State."

Can anything be more latitudinarian than this? And how marked is the contrast, between this doctrine and that of the learned chief justice in *Cook* vs. *Moffit*, *Supra*.

"If (says he) a State may pass a bankrupt law in the fair and ordinary exercise of such a power, it would seem to follow that it would be valid and binding, not only upon the courts of the State, but also upon the courts of the United States when sitting in a State, and administering justice according to its laws: and in the tribunals of other States it should receive the respect and comity which the established usages of civilized nations extend to the bankrupt laws of each other. But how far this comity should be extended would be exclusively a question for each State to decide for itself. *There is no clause in the Constitution which authorizes the courts of the United States to control or direct them in this particular.* It would be a very unsafe mode of construing the Constitution of the United States *to infer such a power in the tribunals of the general government, merely from the general frame of the government and the grant to it of judicial power.*"

We submit these conflicting opinions to the consideration of the Court, in the confident opinion that a law which does not impair the obligation of a bond in the hand of a citizen cannot be declared by this Court to be invalid when it operates on the same bond in the hands of a non-resident. In other words, that the non-residence of the holder does not raise a federal question.

Can a State Tax its Own Securities by a Law subsequent to their issue.

Let us assume, for the argument, that the ordinance is to be regarded as the source of authority for laying th tax.

In the view we take of the case, it is unimportant to note at what time the plaintiffs in error became the owners of the stock. It was all issued prior to the ordinance, and if this is to be regarded as the act of taxation, and that it impaired the obligation of the contract, then, if the question has been properly raised, there is an end to the question, without reference to the date of ownership, or the citizenship of the owners.

The contract of the city was to pay a certain rate of interest on its stock.

It is not pretended that the act complained of, by any of its provisions, alters any of the terms of this contract, or that the contract contains any stipulation exempting the stock from taxation.

It is, however said, that the tax lessens the value of the stock, and from the nature of the contract itself there is an *implied exemption* from taxation.

It is scarcely necessary to cite the numerous cases in which the attempt to *imply* such an exemption has been sternly overruled by the Court, *ex-uno disce omnes.*

"That the taxing power is of vital importance; that it is essential to the existence of the government, are truths which it cannot be necessary to reaffirm. They are acknowledged and asserted by all. It would seem that the relinquishment of such a power is never to be assumed. We will not say that a State may not relinquish it; that a consideration sufficiently valuable may not exist; but as the whole community is interested in retaining it undiminished, that community has the right to insist that

its abandonment ought not to be presumed, in a case in which the deliberate purpose of the State to abandon it does not appear.

This power resides in the government as part of itself, and need not be reserved when property of any description, or the right to use it is granted to an individual. However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion is to be determined by the legislature."

Providence Bank vs. *Billings*, 4 Pet., 563.

The extent of this State power is defined in *McCulloch* vs. *State of Maryland*, (4 Wheat.:) "It may be objected (say the court) that the power of taxation is *not confined to the people and property of the State*, and may be exercised upon *every object brought within its jurisdiction*."

This *is true*. All subjects over which the sovereign power of a State extends are objects of taxation.

The sovereignty of a State *extends to everything which exists by its own authority, or is introduced by its permission*.

This definition of the extent of the power is repeated in *Weston* vs. *City of Charleston*, where the powers of the city, under the charter of 1783, were called in question. And in *City of New Orleans* vs. *Clarke*, decided at this term, it is said: "The power of taxation which the Legislature of a State possesses may be exercised to any extent upon property within its jurisdiction, except as specially restrained by its own or the Federal Constitution."

In *Lane County* vs. *Oregon*, 7 Wall., 77, it is held: "That the extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discre-

tion of the Legislatures, to which the States commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the State constitutions or through elections, and by the condition that it must not be so used as to burden or embarrass the National Government."

Still stronger is the case of *Tucker* vs. *Ferguson*, where there was an express exemption from taxation, and where it was declared that such an act was not a contract unless founded on a consideration; that no presumption exists in favor of a contract to exempt from taxation. Every reasonable doubt should be resolved against it.

That when such a contract exists, it must be rigidly construed, and never be permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require.

22 Wall., 575.

The doctrine announced in these decisions is fully in accord with the 32d number of the Federalist, in which, dealing with the State's power of taxation, it is affirmed, "that, with the sole exception of duties on imports and exports, the States, under the plan of the Constitution, retain that authority in the most absolute and unqualified sense; and that an attempt on the part of the National Government to abridge them in the exercise of it would be a violent assumption of power unwarranted by any article or clause of its Constitution. That the negation of the authority of the States to impose taxes on imports and exports is an affirmance of their authority to impose them on all other articles; that it is not a mere possibility or inconvenience in the exercise of powers, *but an immediate and constitutional repugnancy*, that can by implication alienate and extinguish a pre-existing right of sovereignty."

As the stock in question was created by the authority

of the State, we insist it is clearly within the definition in McCulloch's case, and thus falls within its taxing power.

The implied exemption here contended for was urged in the case of West River Bridge, *supra*, and the same argument was used, to wit, that if the tax is sustainable, then the power is conceded by which a tax absorbing the whole interest might be levied. Both of these propositions are thus answered by the court:

"If the grant of a power to trade in money to a given amount implies an exemption of the stock in trade from taxation, because the tax may absorb all the profits, then the grant of any other thing implies the same exemption. Land, for example, has in many States been granted since the adoption of the Constitution. This grant is a contract, the object of which is that the profits issuing from it shall accrue to the benefit of the grantee. Yet the power of taxation may be carried so far as to absorb these profits. Does this impair the obligation of the contract? The idea is rejected by all; and yet if the proposition for which the plaintiff contends be true, it carries us to this point."

"That proposition is, that a power which is in itself capable of being exerted to the total destruction of the grant, is inconsistent with the grant and is, therefore, *impliedly relinquished by the grantor*, though the language of the instrument contains no allusion to the subject. If this be an abstract truth, it may be supposed universal. But it is not universal, and, therefore, its truth cannot be admitted in these broad terms in any case. We must look for the exemption in the language of the instrument, and if we do not find it there it would be going very far to insert it by construction."

Another ground strongly relied on is, that the tax in

this case cannot be sustained, because there can be no taxation where there is no protection.

The value of the stock depends on the ability of the city to comply with its obligations, and the peace and prosperity of the city on which this ability rests can only be secured by the use of those governmental means that are essential to accomplish this end.

It is true that no protection is afforded to the *person* of the non-resident owner of stock, but the amplest protection is extended to his *interests*, which lie in the custody and control of the city.

Tappan vs. *Merchant's Bk.*, 19 Wall., 503.

We insist, therefore, that the tax in question cannot be construed as in conflict with the constitutional inhibition.

That it in no wise alters any of the terms or conditions of the contract, and that there is nothing in the nature of the contract which renders the conclusion necessary—that it was the intention of the State to renounce the right to tax.

The right of the State to tax its own securities has been affirmed in two States—Ohio and California—and I know of no case in which the contrary has been decided.

Chapaque Bk. vs. *Smith*, 7 Ohio S., 42.
People vs. *In. Co.*, 29 Cal., 533.

In the former case it is held that such taxes do not impair the obligation created by the bond of the State. That while it lessens its value it in no wise interferes with the conditions of the contract.

In the latter case this was considered so well settled that the Insurance Company of New York forebore to raise the question, but rested its resistance to the tax on the ground that the bonds of the State, in the hands of

its agent in San Francisco, were not "personal property within the State" according to the true construction of the revenue law.

In England this is the settled practice, and our own Government has asserted the right in the acts of 1864 and 1865, by which it is provided that the tax on income shall include the "bonds and other securities of the United States." (13 *Stats.*, 281 and 479.)

The 120th sec. of the former act also levied a tax of 5 per cent. on all the dividends of corporations thereafter to be declared without regard to the citizenship of the owner of the stock.

This section was, by the act of 10th March, 1866, declared to extend to "non-residents, whether citizens or aliens." (14 *Stats.*, 4.)

The section of the act referring to the income was amended by the act of 13th July, 1866, providing a like tax upon the "gains and profits" of any business or trade carried on in the United States by "persons residing without the United States, not citizens thereof." 14 Stats., 138.

We have in these acts the assertion by our own government of the right to tax its own securities, and the declaration that taxation may be extended to every interest which exists within its territory, whether that interest belongs to citizens or aliens.

Now, it is no answer to say that the income tax is not a direct tax upon the thing. If it be immoral or illegal to tax directly, it is equally so to reach the same result by indirect methods.

That cannot be a sound rule which makes the thing taxable when taxed with the rest of a man's property of every kind, but untaxable when the thing is alone taxed.

The court could not determine how universal a tax law must be to be operative, or how partial to be inoperative.

In *Railroad Co.* vs. *Jackson* the deduction of the tax from the interest was claimed not only under the State law, but also by the United States under the act of 1864; and it was held that, looking "to the several provisions of that act, and giving them a reasonable construction, it was believed not to be the intent of Congress to impose an income tax on non-resident aliens."

The Court then adds: "It is not important to pursue the argument, as Congress has since, in express terms, by the acts of 10th March and 13th July, 1866, imposed a tax on alien non-resident holders. The question hereafter will be, not whether the laws embrace the alien non-resident bondholders, but whether it is competent for Congress to impose it."

As already stated, Justices CLIFFORD and SWAYNE dissented, holding that the taxes, both State and Federal, were legally assessed.

Upon what ground the acts of Congress thus referred to could be held invalid by this Court we are at a loss to discover, without, indeed, it is to be held that the judiciary may disregard the legislative will whenever, in their opinion, it may work injustice—a doctrine which we have attempted to show was wholly untenable.

We cannot appreciate the distinction which seems to be made between a resident and non-resident bondholder in determining the question whether the tax impairs the obligation of the contract.

If the act impairs the obligation, it is void, whether it affects the citizen or the alien.

If it does not, the alien stands in the same position as the citizen, and can claim no higher right or privilege than pertains to him.

The constitutional inhibition which seeks to preserve the obligation of contracts covers with its ægis the contract of the citizen equally with that of the citizen of another State.

To hold otherwise would be to confer on the citizens of other States greater privileges and rights than are secured to the citizens of the State. Equality of privileges is all that the Constitution guarantees.

We say the citizenship of the party cannot affect the determination of the question. If A, being a citizen, holds the bond of the city, which may be taxed under a certain statute without impairing the obligation of the contract, his transfer of that bond to B, a non-resident, does not create a new obligation, or change the character of the law operating upon it. The same elements of consideration exist, whether the case is made by A or B, and the judgment must be the same.

The Court below passed on five cases at the same time. The two now here are by non-residents; the other three are, doubtless, cases made by citizens. It would seem to be impossible to hold in these two cases that the tax impaired the obligation, without rendering the same judgment when the other cases are brought here.

Then the sole question is whether a *resident stockholder* can invoke the jurisdiction of this court to set aside the act which levies a tax upon the interest arising out of his stock.

The Supreme Court of the State has declared that the act authorizing the tax was a valid act. That the money in the hands of the Treasurer to pay the interest on the stock was personal property within the city: and we respectfully submit that their judgment cannot be reversed here.

Our propositions are:

1. That no Federal question has been raised on the record in Jenkins' case.

2. That no assignment of errors has been made in Murray's case.

3. That the judicial power extends only to the enforcement of constitutional limitations, and that neither an act of Congress nor a statute of the State can be set aside upon the ground that it is unjust or oppressive.

4. That the court has no jurisdiction to hold a State statute to be unconstitutional solely because it is extra territorial in its effect.

5. That the taxing power is vital to the State, and exemption from taxation can never be claimed by mere implication, but only from clear and express declaration.

6. That it extends to every species of property "which exists by the authority of the State, or is introduced by its permission."

7. That the decision of the Supreme Court of the State, that the interest due to stockholders was "personal property within the city" is conclusive upon this Court.

8. That the citizen stockholder in this case has no contract which excludes the State from levying the tax complained of.

9. That the non-resident holding precisely the same character of security, can claim no higher right arising therefrom than may be claimed by the citizen.

10. That the ordinance taxing the stock, while it affected its value, in no wise alters any of the conditions or terms of the contract by which the loan was made, and does not impair the obligation.

11. That this court can not reverse the judgment of the State court without denying to it the right to construe its own local laws.

P. PHILLIPS,
JAS. B. CAMPBELL,
for Defendants in error.

SUPREME COURT OF THE UNITED STATES.

THOMAS C. JENKINS, PLAINTIFF IN ERROR,

vs.

THE CITY COUNCIL OF CHARLESTON, DEFENDANT IN ERROR.

Brief of A. G. Magrath, for Plaintiff in Error, on the Re-hearing of the Case.

Two questions in this case:

1. Has the Court jurisdiction? If so,
2. Is there a violation of the Constitution of the United States? 1

I.

The adjudged cases and the Record establish the jurisdiction.

In *The Home Insurance Company vs. The City Council*, 93 *U. S. Rep., 116*, Mr. Justice Swayne for this Court said: A judgment of a State Court brought in this Court for review must be within one of three categories. The second, as stated by him, is in these words: "There must have been drawn in question a statute of, or authority exercised under a State; upon the ground of repugnance to the Constitution or a law or treaty of the United States: and the decision must have been in favor of the State law or authority in question." 2

In the case cited there was drawn in question a statute, and an authority exercised under a State by a Municipal Corpora-

tion: so drawn in question upon the ground of its repugnance to the Constitution of the United States: and the decision was in favor of the State law, or authority in question.

3 It was the case of a tax by the City Council of Augusta; the bill alleged that the Ordinance was void because in conflict with the contract clause of the Constitution. The Court of last resort in the State dismissed the bill; and the Supreme Court of the United States entertained jurisdiction of the case.

In *Brown vs. Atwell, 92 U. S. Rep., 327,* this Court said: "It is not enough to give us jurisdiction over the judgments of State Courts for the record to show that a Federal question *was argued.* It must appear that its decision *was necessary* to
4 the determination of the cause, and that it was actually decided; or that the judgment could not have been given without deciding it.

In the case now before this Court, a Federal question, the law of a State impairing the obligation of a contract, was drawn in question; and it was actually decided.

In *Bolling vs. Lesser, 91 U. S. Rep., 594,* it is said: "It is not enough that a Federal question was presented to the State Court for determination.

It must appear that such question was in fact decided; or
5 that its decision was necessarily involved in the judgment or decree as rendered."

The exact question so laid down as necessary to give jurisdiction to this Court was ruled in the case now before the Court.

In Hager *vs.* State (Mss. present Term of the Court,) it is said, "It no where appears from the Record that any Federal question was actually decided by the Court below. * * It is not enough that a Federal question might have been raised. We have no jurisdiction unless it actually was raised;
6 and either decided or necessarily involved in the judgment pronounced."

In the case last cited the language of Judge Story is approved in *Crowell vs. Randall, 10 Pet. R. 398.* "It is not sufficient to show that a question might have arisen or been

applicable to the case, unless it is further shown on the Record that it did arise, and was applied by the State Court to the case."

The case now before the Court presents all the requirements laid down in these cases to sustain jurisdiction of this case. 7

In *Edwards vs. Elliott, 21 Wall. R., 533*, this Court held that, although an assignment of error that a State Court had decided that a State Statute was "valid and Constitutional:" and "not repugnant to the Constitution of the United States," was not sufficient to sustain jurisdiction; yet where the Record showed that the Court "adjudged a contract for building a vessel to be not a maritime contract, and that the remedy under the State law was not in conflict with the Constitution," the latter statement in view of the whole Record was sufficient to sustain the jurisdiction of this Court. 8

Not a word is required to show how much more clearly is jurisdiction presented in this case before the Court, than in that now cited.

What does the Record disclose as the case?

1. The plaintiff, a citizen of Maryland, complains that the City Council of Charleston has not performed its contract expressed in its obligation. (*Rec. p. 4*). The defendant insists that the amounts claimed by the plaintiff were due for taxes imposed on the stock, and have been deducted from the interest due to the plaintiff: that such deductions were made 9 in accordance with an ordinance of the City Council, 31st of December, 1870; ratified 22d of March, 1870; and a similar ordinance ratified 1st of March, 1871.

The judgment of the Circuit Court was that the City Council has the right, under the Constitution and Laws of this State, to tax as property of the plaintiff and within its jurisdiction, its debt due to him; and had the right to retain this tax out of the payment of interest due to the plaintiff.

The plaintiff appealed on the ground that the ordinance of the City Council and the laws of the State authorizing this 10 taxation, impair the obligation of the contract of the City Council with him; and so violate the Constitution of the United States.

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The plaintiff appealed on the ground that the ordinance of the City Council and the laws of the State authorizing this 10 taxation, impair the obligation of the contract of the City Council with him; and so violate the Constitution of the United States.

In the decision by the Supreme Court of the State, it is said, "the argument on the general question was rested alone by the appellants on the ground that the tax imposed by the corporation impaired the obligation of the contract which existed between the holder of the stock and the city." (*R., p. 8.*)

11 The same Court said, "that a contract was created imposing obligations on both parties, binding them to its performance according to its true intent, is too plain for doubt." * * "If this right of the City Council to levy a tax in question, is in violation of the said prohibition (*10 Sec., 1 Art.*) it follows as an inevitable consequence that the parties must be relieved of the tax of which they complain." (*R., p. 9.*) * * If the right of taxation existed as a power in the Government at the time of the contract, and so entered into it as to become one of its necessary elements and attributes,

12 *then the obligation of the contract is not impaired by the imposition of the tax.* (*R., p. 9.*)

In this case then from the record, it plainly appears that there was "drawn in question a statute of, or authority exercised under a State, upon the ground of repugnance to the Constitution of the United States, and the decision of the highest Court in the State was in favor of the authority in question." (*93 U. S. R., p. 121.*)

The authority in this case exercised under a State is now presented.

13 The State Constitution of 1868, in the 8th Section, 9th Article provides as follows, "The corporate authorities of counties, townships, school districts, cities, towns and villages, may be vested with powers to assess and collect taxes for corporate purposes; such taxes to be uniform in respect *to persons and property, within the jurisdiction of the body imposing the same.* And the General Assembly shall require that all the *property*, except that heretofore exempted within the limits of municipal corporations, shall be taxed for the payment of debts, contracted under authority of law." In

Section 2, Article 12 of the Constitution, it is provided, that 14
"*the property* of corporations now existing, or hereafter created, shall be subject to taxation, except in cases otherwise provided in this Constitution."

In "An Act to enforce a uniform system of assessment and taxation by Municipal Bodies," approved 1st March, 1870, it is provided, "that all municipal corporations created under or by the law of this State, and vested with power to lay and collect taxes, are hereby authorized and required to assess *all property, real and personal, within their corporate limits* at its actual value; and lay all taxes thereon, at a uniform and equal 15
rate." (*14 Stat. at L., 411.*)

A proviso exempts from taxation "all property and no other exempted from taxation by the 3d Section of the "Act to provide for the assessment and taxation of property," ratified 15th September, 1868. This Act declares subject to taxation, "*all real and personal property in this State*, and personal property of residents of this State, which may be kept or used temporarily out of the State, with the intention of bringing the same into the State, or which has been sent out of the State, and not yet sold. All moneys, credits, *investments in bonds, stocks*, joint stock companies, or otherwise, *of parties resident in this State*, shall be subject to taxation." 16
(*14 Stat. at L., 27.*)

Under the Act of the General Assembly of the 1st March, 1870, the City Council passed the ordinances set out in the Record. (*R., pp. 5, 6.*)

These ordinances require the City Treasurer to deduct and retain out of the interest due to the plaintiff a certain fixed amount. Practically, this reduces the interest due to the creditor, as the same is stated in the contract, and so impairs 17
the obligation of the contract.

The Supreme Court of the State decided that the right of taxation existed as a power in the Government at the time of the contract, and so entered into it as to become one of its necessary elements and attributes; and, therefore, that it "does not impair the obligation of the contract to impose the tax; because it was a property which attached to the contract, and became one of its controlling attributes."

R., p. 9.

18 Further: It decides that city stock, as personal property, is liable to the tax imposed; and that such stock of the city, owned by a non-resident, is *property* within the jurisdiction of the City of Charleston.

R., p. 12.

The fact is conceded that the imposition of this tax does impair the obligation of this contract. The plaintiff in error contends that when that effect is produced by legislation acting on the remedy, or on the contract itself, it is prohibited by the Constitution.

19 *Bronson vs. Kinzie, 1 How., R. 311.*

The Supreme Court of the State, while it concedes that the effect of the imposition of the tax would impair the obligation of the contract, holds that this is not that case of impairing the obligation of a contract, which the Constitution prohibits; because it is a consequence of the exercise of the taxing power of the State; and to the exercise of that power the contract was made, and must remain subject.

To this the reply is made by the plaintiff in error that the imposition of this charge as a tax is not rightly so styled, be-
20 cause the property taxed is not property within the limits of the Municipal Corporation which claims the right to tax; and next, because the taxing power cannot be exercised, when the exercise of it impairs the obligation of a contract.

This certificate of stock represents a debt due by the City of Charleston to the plaintiff in error, a citizen of Maryland. It is not *property* within the jurisdiction of that city, and can not be taxed. The owner is not resident there. The "property," to be subject to taxation, must be "within the jurisdiction of the body imposing the same." This is not "property"
21 "within the jurisdiction" of the city of Charleston, and it can not be taxed. To adopt the language in *15 Wall., 320*: "It is an interference, under the name of a tax, with the obligation of the contract between the non-resident bond-holders and the corporation." In that case, the State laid the tax; here, it is the corporation, which is the debtor, that claims the right to impose the tax. In the same case, the Court said: "Debts owing by corporations, like debts owing by individuals, *are not property* of the debtors in any sense." * * *

"All the property there can be in the nature of things in debts of corporations belong to the creditors to whom they are payable, and follow their domicil wherever that may be." (*15 Wall., p. 320*) * * * "Held by non-residents of the State they are property *beyond the jurisdiction* of the State." * * "To retain 5 per cent. of the interest due to non-resident bond-holder *is not therefore a legitimate exercise of the taxing power.*" * * "Under the pretence of levying a tax, commands the company to withhold a portion of the stipulated interest and pay it over to the State." * * * "*It is a law which thus impairs the obligation of the contract between the parties.*" (*Id., p. 320.*) And that case was referred to as one of the many cases where "*under the name of taxation* an oppressive exaction is made without constitutional warrant amounting to little less than *an arbitrary seizure of private property.*" (*P. 324.*)

The Supreme Court of the State from some general expressions which fell from this Court in the case in *15 Wallace, 300*, and sustained as it claims by the case of *Tappan vs. Merchants Bank of Chicago, 19 Wallace, Rep., 490*, has decided two general propositions: 1st. That the stock owned by the plaintiff in error, a non-resident, is "property," "within the jurisdiction of the body imposing the same; and, 2d. That in such a case that which is taken from the contract, under the claim of the power to tax, does not impair the obligation of the contract in the sense of the Constitution.

In the brief filed at the hearing of the case, the cases upon the first point were collected; and from them it was seen that the reasons upon which at one time government securities were assimilated to realty, have now altogether ceased to be of force; and such debts no longer form a class, governed by any other rule than that which applies to all classes of debts. The cases referred to, are the only cases which bear upon this point, and they remove all distinction between the bond of a private corporation and that of a municipal body in deciding that the *situs* is other than the *domicil* of the owner.

When this Court has said "debts owing by corporations

like debts owing by individuals are not property of the debtors in any sense" * * "debts of corporations
26 belong to the creditors to whom they are payable, and follow their domicil wherever that may be," * * "held by non-residents of the State, they are property beyond the jurisdiction of the State," * * and "to retain the interest due to the non resident bond-holder, is not, therefore, a legitimate exercise of the taxing power;" and that "it is a law which thus impairs the obligation of the contract between the parties;" what other, or more could it have said, if its language was intended to be applicable to this case?

27 At the hearing of this case, the effort was made to bring this case within the rule laid down in *Owens vs. Speed, 5 Wheat., 420*, and *League vs. DeYoung, 11 How. R., 203*. Supposing it so that the tax in this case was levied under the original charter of the City, the answer was obvious that if a State had given to a municipal corporation power to do that which the State had bound itself not to do, such power could not survive in the creature after it ceased to exist in the creator. But the power now claimed by the City Council is exercised under the Constitution of 1868 and the Act of 1841.

28 The only cases referred to as sustaining the power of a State to tax its own bonds are *The Champagne Bank vs. Smith, 7 Ohio State R., 12*, and *The People vs. Insurance Company, 29 Cal. R., 533*. The reasoning of the former case will not commend itself to this Court, as it is directly in conflict with the case in *15 Wall. R., 300*; and in the second, the owner of the bonds made them, with his own consent, subject to the tax levied on them.

This Court has instructed us that "under *the name* of taxation, an oppressive exaction is made without constitutional
29 warrant." When can it be better said that it is "an oppressive exaction," "under the name of taxation," than when the Act so done, is without "constitutional warrant." A State may become a party to a contract, and when it does, the contract clause in the Constitution applies to it.

If it does, to what reserved power in the State is that contract clause subjected? The prohibition against impairing

the obligation of contracts is unqualified. The power of taxation is qualified by every provision of the Constitution which it invades. In the passenger cases, *7 How., R. 572, Alroy vs. California, 24 How. R. 169. Brown vs. Maryland, 12* 30
Wheat. 419, Crandell vs. Nevada, 6 Wall. R. 35, Henderson vs. New York, 92 U. S. Rep. 265, all were cases in which the acts of several States were opposed to the Constitution and held void. In none of these cases did the acts so declared void, more directly and immediately invade the Constitution, though under the form of taxation; than does this violate the contract clause of the Constitution. And when it is said, by the Supreme Court of the State, that this contract necessarily involved in it subjection to the taxing power, that is assumed which is really the matter in dispute. The taxing 31
power over a contract like this, if conceded; is the power to destroy; if it exists, there is no limit. And if the State can not impair the obligation of its contract, but can retain a part of the debt by saying that it is a tax; and so do that which may destroy the contract; the inconsistency is plain, and the statement of it is its refutation.

In *Fletcher vs. Peck, 6 Cranch R., 87*, this Court said, in considering the question whether a grant from the State of Georgia was to be excluded from the contract clause of the Constitution of the United States: "The words themselves 32
contain no such distinction. They are general, and are applicable to contracts of every description." Referring to the time when the Courts of the United States had jurisdiction in suits against States, Ch. J. Marshall said: "A State which then violated its own contract was suable in the Courts for that violation. Would it have been a defence in such suit to say that the State had passed a law absolving itself from such contract? It is scarcely to be conceived that such a defence could be set up. And yet if a State is neither restrained by the general principles of our political institutions, 33
nor by the words of the Constitution, from impairing the obligations of its own contracts, such a defence would be a valid one."

In the *Dartmouth College vs. Woodward, 4 Wheat. R., 518*, Judge Story asked: "Will it be contended that the Legisla-

ture of a State can diminish the salary of a Judge holding his office during good behaviour? Such an authority has never been asserted to our knowledge." "A charter is a contract (said Judge Washington), to the validity of which the con-
34 sent of both parties is essential, and, therefore, it cannot be altered without such consent."

The cases decided by this Court are too numerous, and need not special reference, in which it has been said that in the exercise of the power to tax, if it comes in conflict with a contract to exempt, the power shall not be exercised, because it conflicts with the Constitution of the United States.

And no matter under what class of powers it may fall, or how closely allied to powers conceded to belong to the States, whenever the Statute of a State invades the domain
35 of legislation belonging exclusively to the Congress of the United States, it is void. (*Kirk vs. Smith, 9 Wheat. R., 241.*)

It is not because it is called a tax, that this Court will so consider it. It may be so called, and yet be regarded by this Court as an unconstitutional exaction.

"In whatever language (said this Court) a Statute may be framed, its purpose must be determined by its natural and reasonable result." And again: "Whatever may be the nature and extent of the power, no definition of it, and no urgency for its use, can authorize a State to exercise it in
36 regard to a subject matter which has been confided exclusively to the action of Congress by the Constitution." (*Henderson vs. Mayor, 92 U. S. R., 268.*)

If in this case all the circumstances would present this exaction as a tax levied upon this debt, in the exercise of the taxing power of the State or the city of Charleston, this Court, if it sustained it, would then subject the contract clause of the Constitution to that qualification of it, in its application to contracts of the State, or this Municipal Corporation, of which it would be said in the words of Judge Story, "such
37 an authority has never been asserted to our knowledge."

But in fact the case is aptly described in the language of this Court, as where "under the name of taxation an oppressive exaction is made without Constitution warrant, amounting to little less than an arbitrary seizure of private property." (*15 Wall., R. p. 321.*)

In the Supreme Court of the United States.

THOMAS C. JENKINS ET AL
vs.
CITY COUNCIL OF CHARLESTON. } Nos. 95, 237.

CHARTER OF THE CITY OF CHARLESTON.

Sec. 4. Aug. 13, 1783.

* * * "And the said city council shall also be vested with full power and authority to make such assessments on the inhabitants of Charleston, or those who hold taxable property within the same, for the safety, convenience, benefit, and advantage of the said city as shall appear to them expedient." * *

Const. S. C. Art. IX. Sec's. 1868.

"The corporate authorities of counties, townships, school districts, cities, towns, and villages may be vested with powers to assess and collect taxes for corporate purposes, such taxes to be uniform in respect *to persons and property within the jurisdiction of the body imposing the same;* and the General Assembly shall require that all the property, except that heretofore exempted within the limits of municipal corporations, shall be taxed for the payment of debts contracted under authority of law."

Stats. S. C. XIV. 411 March 1. 1870

Sec. 1. That all municipal corporations created under or by the laws of this State, and vested with power to lay and collect taxes, are authorized and required to assess all property, real and personal, within their corporate limits.

at its actual value, and lay all taxes thereon at a uniform and equal rate.

AN ACT to regulate the assessment and taxation of personal property in the city of Charleston.

Stats. S. C. XIV. March 1, 1870.

"That the act entitled, 'an act providing for the assessment and taxation of property,' approved the 15th day of September, 1868, be and the same is hereby extended, so far as the same is applicable to the city of Charleston for the purposes of assessment and location of the personal property taxable in said city for municipal purposes; and the same should be the rule of the city council of Charleston in assessing personal property and levying a tax thereon in said city, with such modifications as are hereinafter provided."

The act referred to in the above act is as follows:

AN ACT providing for the Assessment and Taxation of Property.

Stats. S. C., Vol. XIV, p. 27

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same*, That all real and personal property in this State, and personal property of residents of this State, which may be kept or used temporarily out of the State, with the intention of bringing the same into the State, or which has been sent out of the State for sale and not yet sold; all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, of parties resident in this State, shall be subject to taxation.

Approved, September 15, 1868.

ORDINANCE.

Feb. 13, 1870. Jan. 18, 1871.

That all real and personal property within the limits of the city of Charleston shall be appraised at its actual

value, and all taxes shall be levied thereon at a uniform and equal rate.

ORDINANCE.

SECTION 1. That the city appraiser is hereby authorized to assess a tax of two cents upon the dollar of the value of all real and personal property in the city of Charleston, for the purposes of meeting the expenses of the city government for the current fiscal year. March 22, 1870.

SEC. 2. The taxes assessed on city stock shall be retained by the city treasurer out of the interest thereon, when the same is due and payable.

Transcript, p. 5.